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Moratorium on the use of the death penalty

Report of the Secretary-General

Summary

The present report is submitted to the General Assembly pursuant to its resolution 65/206. It discusses the trend towards abolition of the death penalty and the establishment of a moratorium on execution. The report also reflects on the application of international standards relating to the protection of the rights of those facing the death penalty. It further discusses the importance of making available relevant information with regard to the use of the death penalty, which can contribute to transparent national debates and international and regional initiatives for the promotion of the universal abolition of the death penalty.

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I. Introduction

1. In resolution 65/206 the General Assembly welcomed the steps taken by some countries to reduce the number of offences for which the death penalty may be imposed and the decisions taken by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty. It called upon all States, inter alia, to establish a moratorium on executions with a view to abolishing the death penalty. It also called upon States which have abolished the death penalty not to reintroduce it and encouraged them to share their experience in this regard.

2. In paragraph 5 of resolution 65/206, the General Assembly requested the Secretary-General to report on the implementation of the resolution at its sixty-seventh session. On the basis of that request, the Office of the United Nations High Commissioner for Human Rights (OHCHR) sent notes verbales to all Member and observer States on 18 April 2012, on behalf of the Secretary-General, requesting relevant information to enable the Secretary-General to prepare his report. Further information was provided by international and regional organizations and intergovernmental bodies, departments, offices and specialized agencies of the United Nations, national human rights institutions and non-governmental organizations (NGOs).[1]

3. In submitting the present report, the Secretary-General draws the attention of the General Assembly to additional relevant information contained in his reports on the question of the death penalty (A/HRC/18/20 and A/HRC/21/29). Attention is also drawn to the reports on the use of the death penalty to be submitted by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to the General Assembly at its sixty-seventh session.

4. The Secretary-General also draws attention to the note verbale dated 11 March 2012 from the Permanent Missions of 53 Member States to the United Nations in New York, in which they expressed their "persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law" (A/65/779).

5. The first section of the present report reviews the situation regarding the global use of the death penalty; in particular it discusses the trend towards abolition of the death penalty and the importance of moratoriums in those States which seek to abolish it. The second section reflects on the application of international norms and standards relating to the protection of the rights of those facing the death penalty. The third section outlines international initiatives for the promotion of the universal abolition of the death penalty. Finally, the fourth section discusses relevant regional initiatives in this regard.

[1] The original contributions are available for consultation at the Secretariat of the United Nations.

II. Global use of the death penalty

A. Developments since the adoption of resolution 65/206

6. Approximately 150 of the 193 States Members of the United Nations have abolished the death penalty or introduced a moratorium, either in law or in practice.

7. During the reporting period, Latvia abolished the death penalty for all crimes. In the United States of America, the States of Illinois and Connecticut became the sixteenth and seventeenth states in the country to do so, in March 2011 and April 2012 respectively. Bills to abolish the death penalty are currently pending in the parliaments in Burkina Faso,[2] Bosnia and Herzegovina,[3] Guatemala,[4] Lebanon,[5] Mali[2] and the Russian Federation.[6] In April 2012, the Government of Guyana announced its intention to launch a national debate on whether to abolish the death penalty.

8. The new Moroccan constitution, adopted in 2011, enshrines the right to life in article 20. In June 2011, just prior to the referendum vote that approved the new constitution, the President of the Committee for the Revision of the Constitution stated that this article is meant to put an end to executions. In July 2011, Suriname reported that the recently revised penal code contained no reference to capital punishment (A/HRC/18/12).

9. Several States have established or confirmed a moratorium on the use of the death penalty: Sierra Leone in September 2011, Nigeria in October 2011, Mongolia in January 2012, and the State of Oregon in the United States in November 2011. In July 2011, as part of the universal periodic review of the Human Rights Council, Somalia reported that the Government was considering declaring a moratorium on the death penalty (A/HRC/18/6).

10. Some States have stopped applying the death penalty for certain crimes. In April 2011, Gambia abolished the death penalty for drug offences. In February 2011, China passed a law removing the death penalty for 13 non-violent economic crimes. In addition, in March 2012, China amended its criminal procedure law, including introducing new procedures enhancing access to legal aid, requiring the recording of interrogations and introducing mandatory appellate hearings and more rigorous review processes in capital cases.[7]

B. Ratification of relevant international and regional instruments

11. In 2012, Mongolia and Benin became the seventy-fourth and seventy-fifth States to accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. During the

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[2] Amnesty International, *Death Sentences and Executions 2011* (London, 2012), p. 54.

[3] Note verbale of Bosnia and Herzegovina, dated 8 March 2012 submitted to OHCHR.

[4] Note verbale of Guatemala dated 4 May 2011 submitted to OHCHR.

[5] Note verbale of Lebanon, date 24 May 2012 submitted to OHCHR.

[6] Note verbale of the Russian Federation, dated 27 June 2012 submitted to OHCHR.

[7] "China's new criminal procedure law: death penalty procedures", Dui Hua Human Rights Journal, 3 April 2012, available from http://www.duihuahrjournal.org/2012/04/chinas-new-criminal-procedure-law-death_03.html.

reporting period, in the context of the universal periodic review, Nigeria, the Niger, Nauru, Sierra Leone, Somalia, Suriname, Samoa, Sao Tome and Principe, Tajikistan, Togo, Tunisia and Zimbabwe expressed their intention to ratify the Second Optional Protocol.

12. With regard to regional instruments, during the reporting period Honduras and the Dominican Republic acceded to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty and in January 2012, Latvia ratified Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty. In June 2012, the Russian Federation reported that the President had submitted a draft law to the State Duma on ratification of Protocol No. 13 of the European Convention, which is currently under consideration by the Duma.

13. The Republic of Korea acceded to the European Convention on Extradition on 29 September 2011. According to article 11 of the Convention, "If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be carried out." A similar provision was included in article 21(3) of the Council of Europe Convention on the Prevention of Terrorism, which entered into force on 1 June 2007. During the period in question, the Convention was ratified by Hungary and Germany in March and June 2011 respectively.

C. Trends in the use of the death penalty

14. The following trends in the use of the death penalty were noted in the context of discussions and interactive dialogues held in the Human Rights Council, in particular in the course of the universal periodic review process.

15. Jamaica stated that that it had had a de facto moratorium on the use of the death penalty since 1988 and that it respected the sentencing principle of proportionality, reserving the death penalty for the most egregious types of murder and only discretionarily imposed after a sentencing hearing (A/HRC/16/14). Maldives noted that it had a long-standing moratorium on the death penalty (A/HRC/16/7). The Niger also reported that the country had a de facto moratorium on the death penalty (A/HRC/17/15).

16. Liberia indicated that, despite various laws allowing for the death penalty, it had not carried out the penalty since 1980 and that, under the constitution, the President had the authority and the prerogative to commute such sentences (A/HRC/16/3). Mauritania reported that no executions had been carried out for 23 years. It further stated that the moratorium would be examined as part of the current reform process, possible alternatives would be considered and conclusions would be reached in accordance with the penal policy of the country (A/HRC/16/17). Myanmar reported that, although the death penalty had not been abolished, it had not carried out the death penalty since 1988 (A/HRC/17/9/Add.1). Saint Lucia stated that the death penalty is reserved for the most heinous crimes and added that it is not currently in a position to move from a de facto to an express moratorium on the

death penalty, or its abolition (A/HRC/17/6). Swaziland reported that although it is a retentionist State in law, it is abolitionist in practice (A/HRC/19/6).

17. The United States noted that that the death penalty is permitted for the most serious crimes, with appropriate safeguards. It further reported that the Supreme Court had recently narrowed down the class of individuals who can be executed, the types of crimes subject to the penalty and the manner in which the punishment is administered, so that it is not cruel and unusual (A/HRC/16/11). Saint Vincent and the Grenadines noted that a series of judicial rulings had limited the scope and applicability of capital punishment in the national context and domestic courts had removed the death penalty as a mandatory sentence and reserved capital punishment for only the most heinous crimes. Additionally, persons who had been on death row for over five years had had their sentences commuted to life in prison (A/HRC/18/15). Malawi reported that its constitution provided that everyone had the right to life and could not be arbitrarily deprived of his or her life, except through the execution of the death penalty imposed by a court of competent jurisdiction (A/HRC/16/4).

18. During constitutional review processes in some States, the question of the death penalty was addressed. The question of the abolition of the death penalty was extensively discussed during the constitutional review process in Sierra Leone and it is expected that this process will continue after the elections in 2012 (A/HRC/18/10). Trinidad and Tobago is currently reviewing its laws with respect to the death penalty and recently piloted the Constitutional (Amendment) (Capital Offences) Bill 2011, to create three categories of murder, limiting the death penalty to the most heinous crimes, with life imprisonment as an alternative punishment (A/HRC/19/7). Zimbabwe also reported that the death penalty was being considered in the process of drawing up a new constitution (A/HRC/19/14). In the United Republic of Tanzania, a bill providing for a constitutional review process was signed into law in November 2011. It is reported that the review will include the compatibility of the death penalty with the right to life enshrined in the constitution (A/HRC/19/4).

III. Protection of the rights of those facing the death penalty

19. Trends with regard to the protection of the rights of those facing the death penalty can be gleaned from recent annual reports of the Secretary-General on the question of the death penalty submitted to the Human Rights Council (A/HRC/18/20 and A/HRC/21/29). Some key trends are also outlined below.[8]

A. Restriction of the use of the death penalty

20. In accordance with article 6, paragraph 2, of the International Covenant on Civil and Political Rights, in States that have not abolished the death penalty, it may only be imposed for the "most serious crimes". The application of this standard in

[8] According to NGOs, at least 18,750 people remained under sentence of death at the end of 2011 and at least 680 people were executed worldwide during that year, excluding China. The exact number of executions carried out in a number of countries was not available. See Amnesty International, *Death Sentences and Executions 2011*, p.7.

recent years has focused on the use of the death penalty for crimes that are not intentional and that do not have lethal or other extremely grave consequences. In his recent report to the Human Rights Council (A/HRC/21/29), the Secretary-General reported that there are currently 32 States or territories which prescribe the death penalty for drug-related offences. It is reported that hundreds of people are known to have been executed for drug-related offences in 2011 and early 2012. Imposing the death penalty for drug-related offences is in violation of article 6, paragraph 2, and the safeguards guaranteeing protection of the rights of those facing the death penalty.[9]

21. The Secretary-General also noted that the use of the death penalty for other non-violent acts, such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults, which may not constitute "most serious crimes" under international human rights norms, is also a particular concern.[10]

22. The Human Rights Committee also continued to address the issue of the restriction of the death penalty to "most serious crimes" in concluding observations adopted following the examination of State party reports. The Committee was concerned that in Ethiopia, death sentences are still imposed by courts for crimes which appear to have a political dimension, as well as following trials held in absentia, without adequate legal safeguards under article 14 of the International Covenant on Civil and Political Rights. It recommended that Ethiopia consider abolishing the death penalty or impose it only for the most serious crimes in compliance with article 14 of the Covenant (see A/66/40, vol. I). With regard to Kazakhstan, the Committee was concerned at the inconsistencies regarding the types of crimes subject to the death penalty, as provided for in the constitution and the criminal code. In particular, it noted that, whereas the constitution prescribes that the death penalty can be established by law only for terrorist crimes entailing loss of life and grave crimes in times of war, the criminal code provides for an expanded list of crimes that are subject to the death penalty (ibid.).

23. In recent years, the application of international standards with regard to the restriction on the use of the death penalty to "most serious crimes" has also focused on the mandatory death penalty (see, for example, E/2010/10, para. 59). The Human Rights Committee has concluded that a mandatory death penalty is not compatible with the limitation of capital punishment to the "most serious crimes". According to the Committee, a mandatory sentence fails to take into account the defendant's personal circumstances and the circumstances of the offence.[11]

24. During the reporting period, legislative reform initiatives were undertaken to abolish the mandatory death penalty in several States. In October 2011, the Attorney General of Barbados announced that it would abolish the mandatory imposition of

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[9] See CCPR/CO/84/THA, para. 14 and CCPR/C/SDN/CO/3, para. 19. See also Economic and Social Council resolution 1984/50 and General Assembly resolution 39/118.

[10] Commission on Human Rights resolution 2005/59, para. 7 (f).

[11] *Rolando vs. Philippines* (CCPR/C/82/D/1110/2002, para. 5.2); *Rayos vs. Philippines* (CCPR/C/81/D/1167/2003, para. 7.2); *Hussain and Singh vs. Guyana* (CCPR/C/85/D/862/1999, para. 6.2); *Chisanga vs. Zambia* (CCPR/C/85/D/1132/2002, para. 7.4); *Chan vs. Guyana* (CCPR/C/85/D/913/2000, para. 6.5); *Larrañaga vs. Philippines* (CCPR/C/87/D/1421/2005, para. 7.2); *Persaud and Rampersaud vs. Guyana* (CCPR/C/86/D/812/1998/Rev.1, para. 7.2); *Weerawansa vs. Sri Lanka* (CCPR/C/95/D/1406/2005, para. 7.2).

the death penalty in accordance with the decision of the Inter-American Court of Human Rights in the case of *Boyce et al. vs. Barbados*.[12] In accordance with the Penal Code (Amendment) Act 2011 of the Bahamas, the courts can now decide between the death penalty and effective lifelong imprisonment in cases of aggravated murder in the Bahamas. In October 2010, Guyana abolished the mandatory death penalty for murder (except in cases of murder of members of the security forces or the judiciary). Uganda confirmed that the death sentence was no longer mandatory, even for capital offences, following the Supreme Court ruling of January 2009: those on death row and not executed within three years had their sentences automatically commuted to life (A/HRC/19/16).

25. In January 2012, the parliament of the Islamic Republic of Iran (Majlis) decided that juveniles below 18 who commit offences under the categories of *Hudud* and *Qisas* (retribution in kind) will not receive mandatory death sentences if the court decides, through forensic reports or any other appropriate means, that the offender did not have adequate mental maturity and the ability to reason.[13]

26. In July 2012, the Government of Singapore announced that it intended to reform legislation providing for the mandatory death penalty, including for drug-related offences. According to reports, the Government also announced that no executions will be carried out until these measures are enacted.[14]

27. The mandatory imposition of the death penalty "with no consideration of the defendant's personal circumstances or the circumstances of the particular offence" was declared unconstitutional in Bangladesh. In its judgment, the High Court Division of the Supreme Court of Bangladesh stated that "any provision of law which provides a mandatory death penalty cannot be in accordance with the Constitution as it curtails the court's discretion to adjudicate on all issues brought before it, including imposition of an alternative sanction upon the accused found guilty of any offence under any law".[15]

28. In June 2011, the High Court of Kenya declared the mandatory death penalty still contained in the penal code to be incompatible with the right to life enshrined in the new constitution of August 2010, thereby confirming the precedent set by the Court of Appeals in 2010.

29. In India, the Bombay High Court declared section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985, which imposed a mandatory death sentence for drug trafficking, "unconstitutional" in September 2011.[16] On 1 February 2012, the Supreme Court of India declared the mandatory death penalty under the Arms Act 1959 unconstitutional.[17]

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[12] Series C, No. 169, Inter-American Court of Human Rights, 20 November, 2007.

[13] In his report on the Islamic Republic of Iran, the Secretary-General regretted that this new Islamic penal code failed fully to abolish the death penalty or restrict its imposition only for the "most serious crimes" (A/HRC/19/82, para. 8).

[14] "Singapore: proposed mandatory death penalty change a welcome step", Amnesty International news, (London, 10 July 2012).

[15] *Bangladesh Legal Aid and Services Trust and another vs. Bangladesh*, writ petition No. 8283 of 2005, judgment issued in 2010, p. 34.

[16] *Indian Harm Reduction Network vs. the Union of India*, criminal writ petition No. 1784 of 2010.

[17] *State of Punjab* vs. *Dalbir Singh*, criminal appeal No. 117 of 2006, judgment issued on 1 February 2012.

30. The Judicial Committee of the Privy Council of the United Kingdom of Great Britain and Northern Ireland examined the question of the mandatory death penalty in a case where the appellant questioned his non-discretionary death sentence for felony murder under section 2A (1) of the Criminal Law Act (as amended in 1997) of Trinidad and Tobago.[18] The judgment, issued on 15 June 2011, stated that "it is common ground that the mandatory death sentence is cruel and unusual punishment." In August 2011, in another case,[19] the Privy Council reaffirmed the test of discretionary imposition of the death sentence. The Privy Council reaffirmed the sentencing criteria as set out in the seminal cases of *Trimmingham* (2009) and *Earlin White* (2010) and held that the death penalty should only be imposed on those guilty of the "worst of the worst" cases and in circumstances where there was no prospect of rehabilitation. Psychological and/or psychiatric reports need to be obtained in every case in order to determine whether there are prospects of rehabilitation.

B. Fair trial guarantees

31. States that have maintained the death penalty must ensure scrupulous respect of due process guarantees. The imposition of a death sentence upon conclusion of a trial in which the provisions of article 14 of the International Covenant on Civil and Political Rights have not been respected, constitutes a violation of the right to life. Those accused of capital offences must be effectively assisted by a lawyer at all stages of the proceedings. In his recent report to the Human Rights Council, the Secretary-General discussed the issues related to fair trial guarantees in detail (A/HRC/21/29, paras. 31-36).

32. During the reporting period, the High Commissioner for Human Rights expressed concern with regard to the lack of a fair trial in death penalty cases in a number of States. For instance, in January 2012, in a press statement, the High Commissioner expressed her concern at reports that 34 individuals, including 2 women, were executed in Iraq on 19 January following their conviction for various crimes. She expressed particular concern regarding "the lack of transparency in court proceedings, major concerns about due process and fairness of trials and the very wide range of offences for which the death penalty can be imposed in Iraq". In April 2012, in a press briefing, a spokesman for OHCHR expressed serious concern that the de facto authorities in Gaza in the Occupied Palestinian Territory continued to issue death sentences and carry out executions, especially since many of the death sentences were handed down by military courts against civilians, and that the use of military tribunals to try civilians in Gaza seriously undermined guarantees of a fair trial.

33. In June 2012, in a press statement, the Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the situation of human rights in the Islamic Republic of Iran, and on torture and other cruel, inhuman or degrading treatment or punishment condemned the executions of four members of the Ahwazi Arab minority in the Islamic Republic of Iran and expressed concern with regard to the lack of due process and fairness of trials in cases involving the death penalty in the country.

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[18] *Nimrod Miguel vs. Trinidad and Tobago*, Privy Council Appeal No. 0037 of 2010.

[19] *Ernest Lockhart vs. The Queen*, Privy Council Appeal No. 0050 of 2010.

34. The Anti-Death Penalty Asia Network reported that in many countries in Asia, specifically in cases where the death penalty is concerned, the right to a fair trial is impeded by laws which deny due process. Even in countries where due process safeguards exist in principle, including in specific laws, they often do not apply in practice.[20]

35. The right to an appeal is set out in article 14 of the International Covenant on Civil and Political Rights. Any person sentenced to death shall have the right to appeal to a court of higher jurisdiction. Moreover, steps should be taken to ensure that such appeals become mandatory (Economic and Social Council resolution 1984/50, annex, para. 6). The importance of "mandatory appeals or review" was also affirmed by the Economic and Social Council in its resolution 1989/64 of 24 May 1989 (para. 1 (b)).

36. In a judgement on 21 March 2012 in the case of *Cannonier and others vs. the Queen*, the Eastern Caribbean Court of Appeal ruled that section 52(2) of the Eastern Caribbean Supreme Court Act is unconstitutional. The Act imposes a 14-day time limit (from the date of conviction) on the right to appeal, but gives the Court the discretion to extend the time to appeal in all cases except capital cases. The Court of Appeal found this exception unconstitutional, as it imposes an arbitrary limitation on the right to appeal and infringes upon the appellants' right of access to the Court of Appeal to have their conviction and death sentence reviewed.

37. In China, article 223(1) of the recently amended criminal procedure law requires courts of second instance to hold trial hearings for all appeals involving the death penalty.

C. Prohibition of execution of children aged under 18 at the time of the offence

38. A small number of States continue to execute persons aged under 18 at the time of the alleged offence, despite the clear prohibition on such executions under article 6, paragraph 5, of the International Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child. In his report to the Human Rights Council on the question of the death penalty, the Secretary General expressed concern with regard to such executions (A/HRC/21/29, paras. 47-53).

39. Furthermore, the International Juvenile Justice Observatory, Penal Reform International and the Child Rights International Network, in a written submission to the present report, reported that 15 countries still have capital punishment as a sentence for juvenile offenders.[21] These organizations further reported that during the reporting period, children aged under 18 at the time of the alleged offence were executed in the Islamic Republic of Iran, Saudi Arabia and the Sudan. Sentences of capital punishment were reportedly handed down to children under 18 at the time of the alleged offence in Egypt, the Islamic Republic of Iran, the Sudan and Mauritania. Amnesty International reported that young individuals are also on death row in Nigeria, Saudi Arabia and Yemen for offences committed as children.[2]

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[20] Anti-Death Penalty Asia Network, *When Justice Fails: Thousands Executed in Asia after Unfair Trials* (London, Amnesty International, 2011).

[21] Available from: http://www.penalreform.org/news/un-secretary-general%E2%80%99s-report-moratorium-use-death-penalty-consultation-process.

40. In many countries, the difficulty of determining age means that children continue to be sentenced to death, even where the death penalty is not authorized as a sentence for minors. For instance, in Yemen, where the death penalty for minors is prohibited, the Attorney General rejected the appeals of two young persons convicted of murder, one of whom was executed in January 2012; the other remains at risk of execution. The convicts claimed to be under the age of 18, but lacked birth certificates to prove this.[2]

41. During the reporting period, human rights treaty bodies addressed the use of the death penalty for children aged less than 18 at the time of their alleged crimes. For instance, in concluding observations adopted on 4 February 2011 on the second report by Laos on its implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child expressed its concern that the death penalty is not explicitly prohibited for children in national legislation and urged Laos to take into account its general comment No. 10 (2007) on children's rights in juvenile justice, which refers to the explicit prohibition on imposing the death penalty or life imprisonment on persons aged less than 18 when the crime was committed (CRC/C/LAO/CO/2, paras. 71 and 72). In October 2011, the Human Rights Committee expressed grave concern about the continued execution of minors and the imposition of the death penalty for persons who were found to have committed a crime while under 18 years of age in the Islamic Republic of Iran. The Human Rights Committee recommended that the Islamic Republic of Iran immediately end the execution of minors and further amend the draft juvenile crimes investigation act and the bill of the Islamic criminal code, with the aim of abolishing the death penalty for persons who have committed a crime while under the age of 18. The State party should also commute all existing death sentences for offenders on death row who committed a crime while under the age of 18.[22] Furthermore, the reports of the Secretary General to the Human Rights Council provide detailed information on this issue (A/HRC/18/20 and A/HRC/21/29).

D. Non-discrimination in the use of the death penalty

42. Non-compliance with the principle of non-discrimination is also a major concern when considering the application of the death penalty. A death sentence is often imposed on less privileged individuals who do not have access to effective legal representation. Membership of a racial, religious, national, ethnic or sexual minority has often been identified as a significant factor in decisions that have led to the death sentence (A/HRC/21/29).

43. In the United States, the North Carolina Racial Justice Act 2009 allows defendants in cases where the death penalty could be imposed, to use statistical evidence to show systemic bias in its imposition. If a defendant can successfully prove that race was a significant factor in the decision to seek or impose the death penalty at the time of his or her trial, the court is required to convert that sentence to life imprisonment. In April 2012, a judge in North Carolina found statistical evidence of racial bias in a case and commuted the death sentence of Marcus Robinson to life without parole. The Court concluded that race was a materially, practically and statistically significant factor in the decision to exercise peremptory

[22] CCPR/C/IRN/CO/3, para. 13.

challenges during jury selection and in the decision of prosecutors at various stages of the trial of Mr. Robinson from 1990 to 2010.

E. Making relevant information available with regard to the use of the death penalty

44. In its resolution 65/206 the General Assembly called upon States to make available relevant information with regard to their use of the death penalty, which could contribute to informed and transparent national debates. During the reporting period, official figures on the use of the death penalty were unavailable in a number of countries. In Belarus, China, Mongolia and Viet Nam, data on the use of the death penalty is still classified as a State secret. In Viet Nam, publishing statistics on the use of the death penalty continues to be prohibited by law. Little or no information was available from the Democratic People's Republic of Korea, Egypt, Eritrea, Libya, Malaysia or Singapore. However, in July 2011, Singapore accepted the recommendation of the Working Group on the Universal Periodic Review to make available statistics and other factual information on the use of the death penalty (A/HRC/18/11, para. 95.15).

45. In 2011, the Committee against Torture was concerned by reports, inter alia, regarding the secrecy and arbitrariness surrounding the execution of persons sentenced to death in Belarus. In this regard, the Committee recommended that Belarus should remedy this, so that family members do not have added uncertainty and suffering, and consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (CAT/C/BLR/CO/4, para. 27). Human rights organizations in Belarus further reported that families of recently executed persons are still not informed where their relatives are buried.[23]

46. In, March 2011, the Human Rights Committee concluded that Kyrgyzstan had violated article 19 of the International Covenant on Civil and Political Rights by denying access to information held by the State on the number of individuals who had been sentenced to death. The Committee stated that information on the use of the death penalty was of public interest and therefore that a right of access to that information existed in principle. The Human Rights Committee stated that any denial of information must be justified by the State party, which Kyrgyzstan had failed to do in this case.[24]

47. Amnesty International reported that in the Islamic Republic of Iran, accurate and complete information about the number of people under sentence of death is not published by the authorities and the legal situation in many individual cases often remains unclear for months, sometimes for years. The lack of information is exacerbated by the fact that families or lawyers may have only very limited access to the convicted person and also by contradictory statements issued by various branches of the Government and regional and central authorities.[2]

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[23] "Death penalty in the Republic of Belarus", report submitted to OHCHR by Belarusian Human Rights House in exile, Human Rights House Foundation, Penal Reform International, London and Human Rights Centre "Viasna", April 2012.

[24] Communication No. 1470/2006, *Toktakunov vs. Kyrgyzstan,* views adopted on 28 March 2011.

IV. International initiatives towards abolition of the death penalty

United Nations High Commissioner for Human Rights

48. The High Commissioner for Human Rights continued to address the question of the death penalty under her mandate to promote and protect the enjoyment and full realization, by all people, of all human rights. The OHCHR management plan for 2012-2013 reaffirms that, pursuant to General Assembly resolutions 62/149 (2007), 63/138 (2008) and 65/206 (2010) on a moratorium on the use of the death penalty, it will continue to advocate and provide support to Member States, civil society and other stakeholders with regard to the establishment of a moratorium by States on the use of the death penalty, with a view to abolishing it.

49. In July 2012, OHCHR convened a global panel in New York on "Moving away from the death penalty — lessons from national experiences". The objectives of the global panel were to maintain and build momentum on the issue in preparation for the General Assembly to adopt a resolution on a moratorium on the use of death penalty at its sixty-seventh session; to share experience in countries where there have recently been positive initiatives in respect of the abolition of the death penalty; and to identify areas where compliance by States with international standards can be enhanced, pending abolition of the death penalty in retentionist countries.

50. OHCHR also continued to advocate for the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. With the support of OHCHR, in September 2011 the Permanent Mission of Belgium to the United Nations Office at Geneva and the World Coalition against the Death Penalty organized a side event during the eighteenth session of the Human Rights Council, to mark the twentieth anniversary of the entry into force of the Second Optional Protocol. In December 2011, a seminar on the reform of the death penalty was organized in China by the Ministry of Foreign Affairs with the support of OHCHR. In July 2012, a workshop on the ratification of the Second Optional Protocol was organized in Cambodia.

51. OHCHR also continued to monitor the application of the death penalty. The High Commissioner and others expressed their concern through press releases and communications to the relevant authorities in relation to the imposition of death sentences in Bahrain, the Islamic Republic of Iran, Iraq and the Occupied Palestinian Territory.

United Nations Office on Drugs and Crime

52. In May 2012, the United Nations Office on Drugs and Crime (UNODC) published a paper articulating its position on the promotion and protection of human rights as part of its work. Taking note of applicable international standards, it noted that if "a country actively continues to apply the death penalty for drug offences, UNODC places itself in a very vulnerable position vis-à-vis its responsibility to respect human rights if it maintains support to law enforcement units, prosecutors or courts within the criminal justice system". It further noted that "At the very least, continued support in such circumstances can be perceived as legitimizing government actions. If, following requests for guarantees and high-level political

intervention, executions for drug-related offences continue, UNODC may have no choice but to employ a temporary freeze or withdrawal of support".[25]

Special Representative of the Secretary-General on Violence against Children

53. During the past year, the Special Representative of the Secretary-General on Violence against Children has also continued giving her support to the campaign, launched with the Child Rights Information Network, to end all inhuman sentencing of children, including the death penalty. As a result of her efforts, special emphasis has been placed on the adoption of national legislation in many States, banning all forms of violence against children, including capital punishment, and on the implementation of international human rights standards within the justice system, with priority attention given to the abolition of death penalty and the suspension of execution of death penalty sentences imposed for offences committed by persons under 18.

International Commission against the Death Penalty

54. The International Commission against the Death Penalty was established in October 2010. The establishment of the Commission was an intergovernmental initiative led by Spain and supported by 16 States (Algeria, Argentina, the Dominican Republic, France, Italy, Kazakhstan, Mexico, Mongolia, Norway, the Philippines, Portugal, South Africa, Spain, Switzerland, Togo and Turkey). Switzerland currently holds the presidency of the support group, which will pass to Norway in October 2012. The Commission is composed of 12 members. Since its creation, it has undertaken a number of activities aimed at abolishing capital punishment and propagating respect for international safeguards for those facing the death penalty.

World Day against the Death Penalty

55. States, international and regional bodies and NGOs around the globe observed the ninth World Day against the Death Penalty on 10 October 2011. The Government of Rwanda organized a regional conference in Kigali on the abolition of the death penalty or the adoption of a moratorium on its execution. Belgium, Chile and the World Coalition against the Death Penalty jointly organized a panel discussion in Geneva on the international jurisprudence on the death penalty and the prohibition of cruel, inhuman or degrading treatment.

56. In a joint declaration issued on 10 October 2011, World Day against the Death Penalty, the European Union High Representative for Foreign Affairs and Security Policy and the Secretary General of the Council of Europe reaffirmed their united opposition to the death penalty and their commitment to its worldwide abolition, describing it as inhumane, ineffective, unjust and irreversible, and noted that experience in Europe had taught that the death penalty did not prevent an increase in violent crime, nor did it bring justice to the victims of such crimes.

[25] UNODC, *UNODC and the Promotion and Protection of Human Rights*, p.10, available from www.unodc.org/documents/justice-and-prison-reform/UNODC_HR_position_paper.pdf.

V. Regional initiatives towards abolition of the death penalty

Africa

57. A study on the question of the death penalty in Africa, prepared by the Working Group on the Death Penalty in Africa of the African Commission on Human and People's Rights, was adopted by the Commission at its fiftieth ordinary session, held from 24 October to 7 November 2011 in Gambia, and officially launched on 19 April 2012. The broad aim of the study is to provide a background to the understanding of the death penalty from the historical and practical perspective and that of human rights law, and to recommend an integrated approach to the abolition of the death penalty in Africa. Strategies proposed in the study include, inter alia, continuing to work closely with United Nations organs, in particular OHCHR, to mobilize support for the abolition of the death penalty and recommend to the African Union and to States parties the adoption of a protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty.[26]

58. In March 2011, the Death Penalty Project held a regional meeting in Nairobi. The meeting reviewed progress in the region and identified strategies for future implementation. The resolution adopted at the regional conference hailed the positive example of Rwanda, which had abolished the death penalty even for perpetrators of genocide, and noted that the death penalty was not normally part of the traditional African justice system.[27]

Asia

59. In November 2011, a conference on the progressive abolition of the death penalty and the possibility of further law reform in Asia was hosted by the City University in Hong Kong. In February 2012, the Death Penalty Project organized a South-East Asia regional strategy meeting in Kuala Lumpur. The meeting was attended by legal experts from the region and representatives from the European Union and the United Kingdom. A legal network on the death penalty consisting of lawyers, NGOs and academics from Indonesia, Malaysia, the Philippines, Singapore, Taiwan, Thailand, the United Kingdom and Viet Nam was established at the meeting.

Americas, including the Greater Caribbean

60. The inter-American human rights mechanisms also continued to address the question of the death penalty during the reporting period. On 2 November 2011, a petition was submitted to the Inter-American Commission on Human Rights against the United States of America, on behalf of Ivan Teleguz, who was on death row in the state of Virginia. It was alleged that Mr. Teleguz had not received an effective and adequate defence, that his due process rights had not been respected and that he had been arrested, tried and sentenced to death without having been informed of his right to contact Ukrainian consular officers, as provided for in the Vienna Convention on Consular Relations. On 22 December 2011, the Inter-American Commission notified the United States of America that precautionary measures had

[26] See www.achpr.org/news/2012/04/d46/.

[27] The resolution of the conference is available from http://www.minijust.gov.rw/moj/AX_Articles.aspx?id=751.

been granted on behalf of the alleged victim and requested a stay of execution until such time as it should pronounce on the merits of the petition.[28]

61. In October 2011, with the support of the Government of Spain, an international conference on the death penalty in the Greater Caribbean took place in Madrid. The conference was attended by representatives, national human rights institutions, NGOs, faith-based organizations and academics from the Greater Caribbean and representatives of regional and international organizations, including the International Commission against the Death Penalty. While recognizing the high levels of violence and crime that the region suffers, the participants reaffirmed human rights and called for a moratorium on the death penalty as a prelude to moving towards total abolition. The need to support the victims' families and to find proper ways to lower the appalling crime rates in the region was also discussed and a press release containing several recommendations was issued.[29] The Working Committee of the Greater Caribbean for Life was also established to communicate information, to consult widely and to draw up an operational plan for abolition of the death penalty.

Europe and Central Asia

62. The European Union has continued to actively implement its 1998 guidelines on the death penalty (revised in 2008)[30] through diplomatic measures, including dialogue and consultation on human rights with third countries, including Belarus, China, the Islamic Republic of Iran, Iraq, Japan, Saudi Arabia and the United States, based on the minimum standards defined by international law and the EU guidelines. In 2011, the European Union also issued statements on over 15 individual cases and carried out more than 15 démarches and other measures regarding individual cases. During the first semester of 2012, the European Union also published 7 statements or declarations, and carried out 6 démarches and other measures regarding individual cases.

63. In September 2011, with the assistance of the European Union and the United Kingdom, Penal Reform International organized an international conference in London entitled "Progressing toward abolition of the death penalty and alternative sanctions that respect international human rights standards". The conference brought together over 100 representatives from 31 countries of Central Asia, East Africa, Eastern Europe, the Middle East and the southern Caucasus, representing Governments, members of the judiciary, lawyers, national human rights institutions, academics, penal reform and justice experts, intergovernmental organizations, international NGOs and other key global stakeholders working for the abolition of the death penalty. The declaration adopted at the conference called for abolition of the death penalty, for a universal moratorium on executions and for alternative sanctions that are fair, proportionate and respect international human rights standards. The declaration also called upon the Arab League and the African Commission on Human and Peoples' Rights to initiate negotiations to explore the

[28] Inter-American Commission on Human Rights, report No. 16/12 on petition P-1528-11, Admissibility, *Ivan Teleguz vs. United States*, 20 March 2012.

[29] Available from www.nodeathpenalty.santegidiomadrid.org/?p=740.

[30] Available from www.consilium.europa.eu/uedocs/cmsUpload/10015.en08.pdf.

possibility of adopting regional protocols aiming at the abolition of the death penalty.[31]

64. In 2011, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) published a background paper on the death penalty in the OSCE area which provides a concise update of changes in the status of the death penalty in OSCE States during the period from 1 July 2010 to 30 June 2011.[32] With the support of OSCE, an international conference was held in Tajikistan in May 2011 on ratification of the Optional Protocol to the International Covenant on Civil and Political Rights.

65. A regional conference on abolition of the death penalty in Central Asia was held in Astana on 26 April 2011. The conference brought together representatives from governmental bodies and agencies, the non-governmental sector and academia from Kazakhstan, Kyrgyzstan and Tajikistan, as well as representatives from international organizations.

Middle East and North Africa

66. The fifth regional workshop on the role of judges, public prosecutors and lawyers in reducing the application of the death penalty in the Arab States was organized by the Arab Center for the Independence of the Judiciary and the Legal Profession in cooperation with the Lebanese institution for democracy and human rights and with the support of the European Union. Forty delegates from 10 States in the Middle East and North Africa participated in the workshop and adopted a set of principles and recommendations to reduce the application of the death penalty in both legislation and practice and in regard to the role of legal professionals, such as judges, public prosecutors and lawyers, in this area.[33]

VI. Conclusions and recommendations

67. **Since the adoption of resolution 65/206 by the General Assembly, there have been significant developments towards the universal abolition of the death penalty. Currently, more than two thirds of States Members of the United Nations have either abolished the death penalty or do not practice it. States which have taken a position in favour of abolition of the death penalty represent different legal systems, traditions, cultures and religious backgrounds. Some Member States which opposed the abolition of the death penalty in the recent past have moved to abolishing it or have imposed a moratorium.**

68. **Even in countries which have retained the death penalty, some noticeable steps towards restricting its use were recorded during the reporting period. In particular, national judiciaries in many States have played a crucial role, including ensuring scrupulous respect for fair trials and due process guarantees and stopping discriminatory practices in the use of the death penalty.**

[31] The full text of the declaration is available from http://www.penalreform.org/publications/london-declaration.

[32] Available from www.osce.org/odihr/43635.

[33] Available from http://www.icab.cat/files/242-318767-DOCUMENTO/Recommendations%20on%20the%205th%20regional%20Workshop%20on%20The%20Role%20of%20Judges.pdf.

69. **While waiting for universal abolition, States which have not yet done so should introduce a moratorium on executions with a view to abolishing the death penalty. Those States which still intend to implement the death penalty and are not willing to establish a moratorium, should ensure the protection of the rights of those facing the death penalty, pursuant to the relevant international norms and standards. In particular, they should restrict the use of the death penalty to the "most serious crimes" and abolish the mandatory use of this penalty, in accordance with the general principles set out in article 6 of the International Covenant on Civil and Political Rights.**

70. **The final paragraph of article 6 of the Covenant states that "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the present Covenant". To date, the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty has been ratified by 75 States. States which have not yet done so should ratify the Second Optional Protocol.**

71. **The lack of comprehensive data with regard to the number of executions, or the number of individuals on death row, is a serious impediment to any national debate which may lead to a move towards the abolition of capital punishment in a given State. For the effectiveness and transparency of national debate, States should ensure that the public is provided with information covering all aspects of the argument about the death penalty and with information and accurate statistics on criminality and the various effective ways to combat it, short of the death sentence.**

72. **The international community, including United Nations offices, departments, agencies and funds and regional intergovernmental bodies and other entities, including non-governmental organizations, should continue and strengthen their support for the global abolition of the death penalty.**

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Advancement of women

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, in accordance with General Assembly resolution 65/187.

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Report of the Special Rapporteur on violence against women, its causes and consequences

Summary

The present report is the second submitted by the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, to the General Assembly, pursuant to resolution 65/187. The report provides an overview of the activities of the Special Rapporteur and discusses the issue of violence against women with disabilities.

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I. Introduction

1. The present report is the second submitted by the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, to the General Assembly, pursuant to Assembly resolution 65/187. Section II summarizes the activities of the Special Rapporteur carried out between October 2011 and July 2012, and section III discusses the issue of violence against women with disabilities.

II. Activities

A. Country visits

2. In the period under review, the Special Rapporteur conducted official country missions to Jordan, from 11 to 24 November 2011; Somalia, from 9 to 16 December 2012; Italy, from 15 to 26 January 2012; Solomon Islands, from 12 to 16 March 2012; and Papua New Guinea, from 18 to 26 March 2012.

3. In 2012, the Special Rapporteur received positive replies to her requests to visit Bosnia and Herzegovina, Croatia and India and is thankful to the respective Governments in that regard. She urges Governments that have not yet responded to do so favourably and looks forward to receiving positive responses from the Governments of Bangladesh, Nepal, Turkmenistan, Uzbekistan, Venezuela (Bolivarian Republic of) and Zimbabwe.

B. Thematic report

4. The thematic report of the Special Rapporteur (A/HRC/20/16), submitted to the Human Rights Council in June 2012, focused on gender-related killings of women. Such killings are the extreme manifestation of existing forms of violence against women. They are not isolated incidents that arise suddenly and unexpectedly, but represent the ultimate act of violence that is experienced in a continuum of violence. The report highlighted that, on a global scale, the prevalence of different manifestations of gender-related killings was reaching alarming proportions. Culturally and socially embedded, such manifestations have continued to be accepted, tolerated or justified — with impunity as the norm. The responsibility of States to act with due diligence in the promotion and protection of women's rights in general, and to a life free of violence in particular, was found to be largely lacking.

C. Communications and press releases

5. The communications sent to Governments concern a wide array of issues that reflect a pattern of inequality and discrimination related to violence against women, its causes and consequences (see A/HRC/20/30 and A/HRC/19/44). The Special Rapporteur regrets that very few Governments have replied to the communications sent to them during the reporting period.

6. The Special Rapporteur also issued press statements, either individually or jointly with other mandate holders.

D. Commission on the Status of Women

7. On 29 February 2012, the Special Rapporteur submitted a written statement to the Commission on the Status of Women, in which she highlighted the need to ensure the social, cultural and economic participation and empowerment of rural women.

E. Other activities

8. During the reporting period, the Special Rapporteur participated in a number of conferences, workshops and side events on topics related to her mandate.

9. On 12 October 2011, the Special Rapporteur convened an expert group meeting in New York to inform her thematic report on gender-related killings of women.

10. In June 2012, she organized a regional expert meeting in Tunis, together with the Tunisia office and North Africa office of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The meeting brought together experts and academics from the region and focused on the responsibility of the State in exercising due diligence to prevent and eliminate violence against women.

11. During the twentieth session of the Human Rights Council in June 2012, the Special Rapporteur convened a side event, with the independent expert on human rights in Somalia, on women's rights in Somalia.

III. Report on violence against women with disabilities

A. Background

12. Women with disabilities make up a significant part of the world's population. According to the 2011 *World Report on Disability* of the World Health Organization and World Bank, it is estimated that approximately 15 per cent of the world's population lives with some form of disability. The disability level threshold indicates that the male disability prevalence rate is 12 and the female 19.2. Based on such figures, it is clear that women with disabilities constitute a significant portion of the global population. Despite the evolution of normative frameworks concerning both the human rights of women and of persons with disabilities, the impact of the combined effects of both gender and disability have not gained sufficient attention, and violence against women with disabilities remains largely unaddressed.

13. The 2011 report to the Human Rights Council of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/17/26) focused on the multiple and intersecting forms of discrimination that contribute to and exacerbate violence against women, noting that factors such as ability, age, access to resources, race/ethnicity, language, religion, sexual orientation and gender identity and class can exacerbate the violence women experience. Although women with disabilities experience many of the same forms of violence that all women experience — when gender, disability and other factors intersect — the violence against them takes on unique forms, has unique causes and results in unique consequences.

14. In recent years, the experiences of women with disabilities have become somewhat more visible. An analysis of the intersection between the provisions of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, along with various United Nations resolutions and policy statements on human rights, women's rights and the rights of persons with disabilities, demonstrates the synergy that exists to foster changes in law, policy and practice in order to ensure the inclusion of women with disabilities in understanding and responding to violence against women.

15. In its resolution 17/11, the Human Rights Council requested OHCHR to prepare a thematic analytical study on the issue of violence against women and girls and disability in consultation, inter alia, with the Special Rapporteur on violence against women, its causes and consequenccs. The resulting report (A/HRC/20/5 and Corr.1) was based on the submissions received from Member States, United Nations agencies and programmes, national human rights institutions and non-governmental organizations.

16. The present report aims to deepen the findings of the OHCHR study and further examine the manifestations, causes and consequences of violence against women with disabilities. In addition, the report briefly examines relevant international and regional legal frameworks and provides recommendations.

B. Social model understanding of violence against women with disabilities

17. An analysis of violence against women with disabilities must be informed by, and reflective of, a social model understanding of disability, in keeping with the Convention on the Rights of Persons with Disabilities. The preamble and article 1 of the Convention on the Rights of Persons with Disabilities introduce the social model of disability by describing disability as a condition arising from interaction with various barriers that may hinder disabled peoples' full and effective participation in society on an equal basis with others. Such a perspective does not deny the reality of impairment or its impact on an individual. It does, however, challenge the physical and social environments and the legal frameworks that have a negative impact on persons with disabilities.

18. Many policies operate on the assumption that a disabling condition is pathological and a defect, and not a socially ascribed so-called deficit.[1] The impact of such a perspective is clear: persons with disabilities are to be avoided and/or excluded, as opposed to accommodated and included in the community.[1] According to the Convention on the Rights of Persons with Disabilities, accommodation, inclusion and support are the obligated responses to disability, including for families of persons with disabilities.

19. The "gender-mainstreaming, disability-inclusive" approach draws upon a feminist-disability discourse that seeks to challenge dominant assumptions about living with a disability, and it situates the disability experience in the context of rights and exclusions. It also questions the assumption that disability is a flaw or a deficiency. To do so, it defines disability broadly from a social rather than a medical

[1] Janet E. Lord, "The Convention on the Rights of Persons with Disabilities and antenatal screening for disability", expert opinion prepared for Saving Downs New Zealand, 2012.

perspective. Disability, it is argued, is a cultural interpretation of human variation rather than an inherent inferiority, pathology to cure, or an undesirable trait to eliminate.[2]

20. Women with disabilities experience both the stereotypical attitudes towards women and towards persons with disabilities. Both the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities recognize the role of stereotypes in the denial of human rights towards women with disabilities. The impact of stereotypical views of women with disabilities includes rolelessness, the absence of sanctioned social roles and/or institutional means to achieve these roles and can cultivate a psychological sense of invisibility, self-estrangement, and/or powerlessness.[3]

21. Social sanctions relating to poverty, race/ethnicity, religion, language and other identity status or life experiences can further increase the risk of group or individual violence for women with disabilities.[4] Women with disabilities who also belong to (or are perceived as belonging to) disfavoured or minority groups may face compounded violence and discrimination based on several factors simultaneously. The recognition of that reality — variously referred to as intersectionality, multidimensionality, and multiple forms of discrimination — is important to any examination of violence against women with disabilities.

22. Indigenous women with disabilities often experience multiple forms of discrimination and face barriers to the full enjoyment of their rights, based on their indigenous status, their disability and their female identity. The incidence of violence against them is heightened by factors, such as living in a context of high levels of alcohol and substance abuse, which leads to violence against them; cultural and linguistic barriers; lack of education services for children with disabilities in native communities; and systemic poverty.[5] They may also encounter barriers resulting from the use of conflicting or complex traditional and contemporary justice and service systems.[5]

23. Rural women generally have less access to resources, training and skill development opportunities — due to high levels of illiteracy, the prevalence of negative stereotypes and their overall socioeconomic status. The final report of a workshop on women and disability conducted by the Economic and Social Commission for Asia and the Pacific in Bangkok in 2003 indicates that more than 80 per cent of women with disabilities in rural areas in Asia and the Pacific have no independent means of livelihood and are thus dependent on others for their economic survival. Inaccessible environments and lack of services, and lack of information and awareness, education, income and contact further exacerbate the situation, resulting in further isolation and invisibility. In the general statement adopted at its fiftieth session on 19 October 2011, the Committee on the Elimination of Discrimination against Women noted that violence against women, including

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[2] Rosemarie Garland-Thomson, Feminist disability studies, *Signs: Journal of Women in Culture and Society*, vol. 30, No. 2 (2005).

[3] Michelle Fine and Adrienne Asch, "Disabled women: sexism without the pedestal", *Journal of Sociology and Social Welfare*, Soc. vol. 8, No. 2 (1981).

[4] Johanna Bond, "International intersectionality: a theoretical and pragmatic exploration of women's international human rights violations", *Emory Law Journal*. vol. 52, No. 71 (2003).

[5] Doreen Demas, "Triple jeopardy: native women with disabilities", *Canadian Woman Studies*, vol. 13, No. 4 (1989), pp. 53-55.

trafficking in women, sexual exploitation and forced labour, is often linked to poverty and lack of opportunities in rural areas.

24. Women with disabilities who are members of minority groups are subject to multiple forms of discrimination and violence because of their race/ethnicity, gender and disability status combined. They may be subject to discrimination in access to education, employment, and health care; and may be denied reasonable accommodations.[6] Women of colour with disabilities who do seek preventive support or access to justice are subject to discriminatory practices that treat them as not credible or as "contributors" to their own abuse. Some resist seeking justice in formal systems that they see, at best, as unresponsive to their needs and, at worst, as destructive to their peoples as a whole.[7] Furthermore, despite their own efforts to be heard about the violence they experience, they might be effectively silenced both by community social sanctions and ineffective anti-violence laws.

25. Women with disabilities in conflict or post-conflict regions may be at additional risk of violence as members of a targeted race/ethnic, religious or linguistic group and may have greater difficulty in accessing services in the conflict environment.[8] Women with disabilities face additional burdens in refugee camps because the facilities are rarely accessible or designed to meet their specific needs. Serious problems with the physical layout and infrastructure of refugee camps have been noted by some organizations.[9] Such problems mean that services, including toilets, shelters and health facilities will not be accessible to people with disabilities and that no special accommodations are made to ensure accessibility to the food and supplies they need on a daily basis. In addition, because camps and facilities are generally inaccessible, most persons with disabilities are forced to remain in them.[9] Furthermore, justice and post-conflict reconciliation activities generally do not include women with disabilities, nor are such programmes made accessible or inclusive.

26. Undocumented women with disabilities may be at higher risk of violence because of the aggressor's control over immigration status; language barriers; distrust of the police force; and barriers to social and public services.[10]

27. Lesbians and other sexual minorities who identify as female and who have disabilities confront social barriers, isolation, exclusion and violence due to both sexual minority status and disability. Lesbians with psychosocial disabilities have been largely excluded or overlooked in research and treatment, despite their usage of mental health-care and other psychosocial services. They sometimes experience a

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[6] Margaret Nosek, and others, "Disability, psychosocial and demographic characteristics of abused women with disabilities", *Violence against Women*, vol. 12, No. 9 (Sept. 2006), pp. 838-850.

[7] Aarati Kasturirangan, Sandhya Krishnan and Stephanie Riger, "The impact of culture and minority status on women's experience of domestic violence", *Trauma Violence Abuse*, vol. 5, No. 4 (2004), 318-332.

[8] Stephanie Ortoleva, "Women with disabilities: the forgotten peacebuilders", *Loyola of Los Angeles International and Comparative Law Review*, vol. 33 (2010).

[9] Women's Refugee Commission, *Disabilities Among Refugees and Conflict-Affected Populations* (New York, 2008).

[10] Julissa Reynoso, "Perspectives on intersections of race, ethnicity, gender, and other grounds: Latinas at the margins", *Harvard Latino Law Review*, vol. 7 (2004), pp. 64-73.

"cultural contradiction" imposed by society since lesbianism is viewed as a sexual identity, while women with disabilities are often stereotyped as asexual.[11]

28. The forced sterilization of women with disabilities remains a global problem.[12] Women with disabilities who elect to have a child are often criticized for their decision and face barriers in accessing adequate health care and other services for themselves and their children.[13] Although society's fear that women with disabilities will produce so-called "defective" children is for the most part groundless, such erroneous concerns have resulted in discrimination against women with disabilities from having children. There is a dichotomy between the notions, on the one hand, that motherhood is expected of all women and, on the other, that women with disabilities are often discouraged, if not forced, to reject motherhood roles, despite their personal desires.[3] Research shows that no group has ever been as severely restricted, or negatively treated, in respect of their reproductive rights, as women with disabilities.[14]

29. The 2009 World Health Organization (WHO) guidance note on promoting sexual and reproductive health for persons with disabilities highlighted the fact that women with disabilities are considered in some societies to be less eligible marriage partners and may therefore find themselves in unstable relationships.[3] Additionally, if such unstable relationships become abusive, women with disabilities have fewer legal, social and economic options and may be further discriminated against.[3] For example, in the event of child custody disputes, courts may use the discriminatory stereotype that the non-disabled partner must be a more competent parent, when awarding custody.[15]

30. Older women experience disability more frequently as they age, and older women with disabilities are at particularly high risk of violence. Older women face multiple forms of discrimination, with gender, disability and age compounded by other forms of discrimination. General recommendation No. 27 of the Committee on the Elimination of Discrimination against Women, on older women and protection of their human rights, recognizes that, inter alia, gender stereotyping and traditional and customary practices can have harmful impacts on all areas of the lives of older women, in particular those with disabilities, and can result in physical violence as well as psychological, verbal and financial abuse.

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[11] Shelley Tremain, ed., *Pushing the Limits: Disabled Dykes Produce Culture* (Women's Press, 1996).

[12] Women With Disabilities Australia, "Sterilization of women and girls with disabilities — an update on the issue in Australia" (December 2010).

[13] World Health Organization, *Promoting sexual and reproductive health for Persons with Disabilities: World Health Organization/United Nations Population Fund Guidance Note* (2009).

[14] Rannveig Traustadottir, "Obstacles to equality: the double discrimination of women with disabilities: overview article" (1990).

[15] Elizabeth Lightfoot, Katharine Hill and Traci LaLiberte, "The inclusion of disability as a condition for termination of parental rights", *Child Abuse and Neglect*, vol. 34 (2010), pp. 927-934.

C. Manifestations of violence against women and girls with disabilities

31. Violence against women with disabilities occurs in various spheres, including in the home, the community, as violence that is perpetrated and/or condoned by the State and as violence against women in the transnational sphere. The forms of violence to which women with disabilities are subjected can be of a physical, psychological, sexual or financial nature and include neglect, social isolation, entrapment, degradation, detention, denial of health care, forced sterilization and psychiatric treatment. Women with disabilities are twice as likely to experience domestic violence as non-disabled women, and are likely to experience abuse over a longer period of time and to suffer more severe injuries as a result of the violence.[16]

32. Women with disabilities are at high risk of violence based on social stereotypes and biases that attempt to dehumanize or infantilize, exclude or isolate them, and target them for sexual and other forms of violence. Violence also has the consequence of contributing to the incidence of disability among women.

33. Women with disabilities may be subjected to situations of physical discomfort or embarrassment because their right to privacy is undervalued or not valued at all. Home assistants, family members or others who provide assistance may inflict violence through purposeful neglect (for example, leaving a woman who is in bed or who uses a wheelchair with no assistance for long periods in order to "punish" or manipulate her). Others may confine a woman with disabilities to her home or isolate her from other human contact. Mobility aids, communication equipment or medications may be withheld, causing physical injury or mental and emotional suffering.

34. In domestic violence situations, women with disabilities may fear reporting or leaving an abuser because of emotional, financial or physical dependence; they may also fear losing custody of their children. Barriers to accessing justice further complicate their ability to seek redress and protection, thereby allowing for the continuation of the abuse.

35. Women with disabilities experience rape and sexual abuse at home, at work, at school or on the street (see A/61/122/Add.1 and Corr.1). Others experience rape and sexual abuse within institutions, both state and non-state.

36. Women with disabilities are often treated as if they have no control, or should have no control, over their sexual and reproductive choices. They may be forcibly sterilized or forced to terminate wanted pregnancies — under the paternalistic guise of "for their own good". This is done sometimes with the sanction of partners, parents, institutions or guardians. There is a long history of socially and even legally sanctioned forced and non-consensual sterilization of women with disabilities. Despite legal prohibitions in some countries, involuntary sterilization is used to restrict the fertility of some persons with disabilities, particularly those with intellectual disabilities.[17] Sterilization also has been used as a technique for menstrual management.

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[16] Women With Disabilities Australia, "Valuing South Australia's women: towards a women's safety strategy for South Australia", discussion paper prepared for the government of South Australia, 2004.

[17] Owen Dyer, "Gynaecologist is struck off for sterilising women without their consent", *British Medical Journal*, vol. 325 (2002); Laurent Servais, "Sexual health care in persons with

37. Denying access to reproductive health care, or forcing women with disabilities to undergo procedures aimed at controlling their reproductive choices, is a form of violence against women. The Programme of Action of the International Conference on Population and Development recognizes the basic right of all individuals to make decisions concerning reproduction free of discrimination, coercion and violence; to have the information and means to do so; and the right to attain the highest standard of sexual and reproductive health. The Programme of Action also recognizes that these rights apply to persons with disabilities.

38. In institutional settings, women with disabilities are subjected to numerous forms of violence, including the forced intake of psychotropic drugs or other forced psychiatric treatment. Furthermore, forced institutionalization itself constitutes a form of violence. People with mental health conditions and intellectual disabilities are sometimes subject to arbitrary detention in long-stay institutions with no right of appeal, thereby robbing them of their legal capacity.[18]

39. Women in institutions who need support services are usually more vulnerable. Vulnerability, both in institutions and in community settings, can range from the risk of isolation, boredom and lack of stimulation, to the risk of physical and sexual abuse. Evidence suggests that people with disabilities are at higher risk of abuse for various reasons, including dependence on a large number of caregivers and also because of barriers to communication.[19] One study found that the majority (68 per cent) of psychiatric outpatients in a hospital had experienced major physical and/or sexual assaults therein, a higher frequency than in the general population.[20]

40. Violence against women may be permitted by law or carried out under the authority of the State.[21] States may fail to fulfil their obligation to respond to and prevent violence against women with disabilities either through the adoption and implementation of laws and practices that directly violate rights, or by failing to adopt and implement laws and practices that uphold rights.

41. Women with disabilities face a number of obstacles in the justice system, including the systematic failure of the court system to acknowledge them as competent witnesses. This exclusion is particularly problematic in cases involving sexual assault or other forms of gender-based violence, in which the complaining

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intellectual disabilities", *Mental Retardation and Developmental Disabilities Research Reviews*, vol. 12 (2006); Sonia R. Grover, "Menstrual and contraceptive management in women with an intellectual disability", *The Medical Journal of Australia*, vol. 176 (2002); A. J. Stansfield, A. J. Holland and I. C. H. Clare, "The sterilisation of people with intellectual disabilities in England and Wales during the period 1988 to 1999", *Journal of Intellectual Disability Research*, vol. 51 (2007).

[18] Lisa Adams, "The right to live in the community: making it happen for people with intellectual disabilities in Bosnia and Herzegovina, Montenegro, Serbia and Kosovo", Disability Monitor Initiative for South East Europe (Handicap International Regional Office for South-East Europe, 2008); and Germana Agnetti, "The consumer movement and compulsory treatment: a professional outlook", *International Journal of Mental Health*, vol. 3 (2008).

[19] Dick Sobsey, *Violence and Abuse in the Lives of People with Disabilities: the End of Silent Acceptance?*, Paul H. Brookes, ed. (Baltimore, Maryland, Brookes Publishing, 1994).

[20] A. Jacobson, "Physical and sexual assault histories among psychiatric outpatients", *The American Journal of Psychiatry*, vol. 146, No. 6 (1989), p. 755.

[21] A. B. Andrews and L. J. Veronen, "Sexual assault and people with disabilities", *Journal of Social Work and Human Sexuality*, vol. 8, No. 2 (2006); and The International Network of Women with Disabilities, "Violence against women with disabilities", Center for Women Policy Studies (2011).

witness may provide key evidence necessary for a conviction. Sexual abuse cases involving a complainant with learning disabilities rarely go to court, and if they do, the complainant frequently does not serve as a witness against the accused.[22] The tendency to "infantilize" women with mental disabilities contributes to the discounting of their testimony.[23] Not only are they excluded as witnesses because they may have difficulty communicating with the police, but stereotypes operate to exclude or discount their testimony. For example, in sexual assault cases, the general failure of society to see people with disabilities as sexual beings may result in judges and juries discounting the testimony of witnesses.[24] On the other hand, complaints may be disregarded because of views and beliefs about some women with mental disabilities as hypersexual and lacking self-control.

42. Law enforcement and legal agencies may dismiss complaints since they see women with disabilities who require assistive communication or accommodations, as well as women with psychosocial and intellectual disabilities, as lacking credibility.[25] There may also be a tendency for judges to require more corroborating evidence of an assault in cases involving women with disabilities than in other cases, and evidence about prior mental health treatment may be used to discredit the testimony of such witnesses.[24] Women with cognitive disabilities may have more difficulty with remembering the sequence of events, which may make them appear less credible on the stand.[24] The failure to afford the testimony of women with disabilities due respect is problematic in gender-based violence and sexual assault cases, where the testimony of the parties and the credibility of the witnesses are exceptionally important.[26] Women with disabilities face violence at least one and one-half times more often than other women.[25] Thus, excluding them from the witness stand denies the reality that they face violence to a disproportionate degree.

43. Paternalistic attitudes towards persons with disabilities may also prevent full and fair access to the witness stand. Various players in the judicial system may view women with disabilities as too fragile to withstand the rigors of examination by attorneys or judges, leading to their exclusion.[26] Such exclusion has the effect of placing them at even greater risk since perpetrators may target women with disabilities because they know that complaints may be taken less seriously. Moreover, women with disabilities whose complaints have been dismissed are less likely to come forward again to report abuse.[26]

44. The institutions, the physical structures and legal proceedings may place substantial barriers to accessibility and participation of witnesses with disabilities. There is evidence that language used in the courtroom, in particular during the cross-examination process, can be distressing and confusing to some witnesses with

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[22] Pamela Cooke and Graham Davies, "Achieving best evidence from witnesses with learning disabilities: new guidance", *British Journal of Learning Disabilities*, vol. 29 (2001).

[23] Janine Benedet and Isabel Grant, "Hearing the sexual assault complaints of women with mental disabilities: evidentiary and procedural issues", *McGill Law Journal*, vol. 52 (2007), pp. 531 and 532.

[24] Hilary Brown, "Sexual abuse: facing facts", *Nursing Times*, vol. 87 (1991).

[25] Disability Discrimination Legal Service, "Beyond belief, beyond justice: the difficulties for victims/survivors with disabilities when reporting sexual assault and seeking justice" (November 2003), p. 17.

[26] Chris Jennings, "Family violence and sexual assault: a criminal justice response for women with disabilities", paper presented at a forum on the theme "Disability and the criminal justice system: achievements and challenges", Melbourne, Australia, 13 July 2005.

a cognitive or learning disability.[25] Cross-examinations may involve trick questions, hypothetical questioning, and "leading and lengthy" questions with double negative phrasing, which are often confusing to people with and without a cognitive disability.[25] Furthermore, owing to the mode of questioning, people with intellectual disabilities may give the answers that they think will satisfy the interrogator.[25] It has been suggested that judges should more actively intervene in proceedings to encourage clearer communication and that support services should be offered to witnesses with a cognitive disability to ensure that they can navigate the trial process.[25]

45. Courthouses and police stations may also not have the resources necessary to ensure that witnesses with disabilities have the ability to adequately communicate with the police or to access information. During initial police questioning for example, sign language interpreters may not be readily accessible to assist women. Information may not be available in Braille or other alternative formats.[27] Furthermore, information about legal rights is often not provided in formats that are clear, easy to understand and use plain language, thus preventing women with disabilities who have limited reading skills from understanding their rights.[27] In such circumstances, acts of violence against women with disabilities will remain unpunished.

46. Stereotypical views of women with disabilities may be imposed on their parental rights or through the termination of parental rights. According to Women with Disabilities Australia, it is relatively common for everyday stereotypes and deeply rooted beliefs about women with disabilities to be legitimized in family court and used against them in a divorce hearing or custody trial. Due to such prejudices, many women have lost custody and even visitation rights with their children.

47. Though disability laws may prohibit discrimination in social services, these laws do not always extend to child custody and protection proceedings.[28] As a result, divorce proceedings and child custody hearings may focus on the mother's disability as opposed to her parenting behaviour, thereby implicitly equating parental disability with parental unfitness.[28]

48. Also, women with disabilities may experience greater regulation and prejudice by social service agencies.[28] Thus the child's "best interests" may be seen as primary to, and at odds with, the maternal rights of women with disabilities.[29] According to the Guide for Creating Legislative Change, women with a psychosocial, developmental or intellectual disability may be at particular risk of greater regulation and termination of parental rights.

49. Fear of unjustified termination of parental rights may cause women with disabilities to remain in abusive relationships. The denial of legal capacity, which includes restrictions on the right of women with disabilities to testify in the courts, the failures of the justice system to respond to the abuse of women and girls with disabilities, and/or the inability to see them as credible witnesses, perpetuates and

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[27] Stephanie Ortoleva, "Inaccessible justice: human rights, persons with disabilities and the legal system", International Law Society of America, *Journal of International and Comparative Law* (2011).

[28] Dyer, Servais, Grover, Stansfield, Holland and Clare (see footnote 17 above).

[29] Phyllis Chesler, *Mothers on Trial: the Battle for Children and Custody* (1985).

reinforces abuse. Thus, eliminating such discriminatory practices is essential to addressing violence against women with disabilities.

50. The discrimination and violence faced by women with disabilities in society tends to be exacerbated by prison environments. In the *Handbook on Prisoners with Special Needs*, the United Nations Office on Drugs and Crime (UNODC) recognized that women prisoners with disabilities were at a particularly high risk of manipulation, violence, sexual abuse and rape and that prisoners with physical disabilities might be actively targeted or suffer the effects of having their special needs, including safety needs, neglected. Furthermore, according to the Prison Rape Elimination Act of 2003 of the United States of America most prison staff is not adequately trained to prevent or respond to inmate sexual assaults, and prison rape often goes unreported and untreated.

51. There is evidence that the experience of prison itself is a source of disablement for all prisoners.[30] Thus, not only are women with pre-existing disabilities liable to see their disabilities aggravated but those who enter prison without disabilities may develop them during their incarceration, due to prison conditions.[30]

52. Women with disabilities in prison also face discrimination upon their assignment to a particular facility, due to misclassification of their risk level. In the *Handbook on Prisoners with Special Needs*, UNODC also noted that, owing to the limited accommodation available for them, female prisoners in a number of countries are housed in security levels not justified by their risk assessment undertaken upon admission. This is exemplified in cases where a prisoner who would normally be placed in an open facility can instead be sent to secure custody, should a member of the medical, psychological or psychiatric staff decide that the medical and support services required are unavailable in open custody.[31]

53. Discrimination in access to services and programmes during incarceration is a reality for most women with disabilities. They may face difficulties in accessing these because such programmes fail to account for their disabilities;[32] or they may be explicitly denied the ability to participate in programmes, which are largely tailored to prisoners without disabilities.[31] Furthermore, women with disabilities who are able to participate in work programmes are often paid lower wages for their work.[32]

54. A common factor considered by parole boards and other bodies determining the appropriateness of the early release of prisoners is the ability of a prisoner to adapt to life in the outside world. This can be a difficult threshold for any prisoner to meet, but especially so in the case of women with disabilities who may have specific needs that the board may not adequately take into consideration.[33] The problem is exacerbated by the misclassification of such women as higher risk prisoners, which makes it much more difficult to secure an earlier release.[33]

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[30] Beth Ribet, "Naming prison rape as disablement: critical analysis of the Prison Litigation Reform Act, the Americans with Disabilities Act and the imperatives of survivor-oriented advocacy, *Virginia Journal of Social Policy and the Law* (2010).

[31] Anti-Discrimination Commission Queensland, *Women in Prison* (2006).

[32] Megan Bastick and Laurel Townhead, Quaker United Nations Office, "Women in prison: a commentary on the UN standard minimum rules for the treatment of prisoners", *Human Rights and Refugees Publications* (2008).

[33] Judith Cockram, "People with an intellectual disability in the prisons", *Psychiatry, Psychology and Law* (2005).

55. A compilation of British studies found that 20 to 30 per cent of offenders had learning disabilities or difficulties that interfered with their ability to cope within the criminal justice system and that the female prison population was five times more likely to have a mental health disability than the general population.[34] Another study found that as many as 80 per cent of female detainees had at least one psychiatric disability.[35] Furthermore, such individuals are increasingly housed in prisons rather than psychiatric facilities.[30] Those with intellectual or psychosocial disabilities face threats of inadequate care and mistreatment, in addition to the risks of self-harm and the deterioration of psychological or emotional well-being owing to the nature of incarceration, according to the UNODC *Handbook*. Closure of psychiatric institutions in some countries has led to a marked increase in the criminalization of women with disabilities.[36]

56. The incarceration of persons with disabilities without necessary services or accommodations, irrespective of any abusive intent, has been deemed illegal and degrading treatment, as well as a potential violation of the International Covenant on Civil and Political Rights.[37] In *Price v. United Kingdom*, 2001, the European Court of Human Rights found that incarceration without necessary accommodations constitutes ill-treatment.[38] When combined with pervasive discrimination, the poor living conditions and violence already present, the risks of incarceration are magnified for those women who have a disability.[39]

57. As regards violence against women with disabilities in the transnational sphere, women and girls with disabilities are at risk of being trafficked and forced into prostitution. The four major risk factors for susceptibility to trafficking are poverty, ignorance, minority status and being female. Women and girls with disabilities may fit into one or more of these high-risk categories. Further, because of the misguided belief that sex with a virgin will cure HIV/AIDS, and the stereotype that women with disabilities are virgins, they can be targeted for trafficking as sex workers.[40]

58. In some contexts, because of stereotypical views of the value of disabled female children and the lack of support available to parents with children with disabilities, parents may see trafficking of their disabled daughter as their only economic option. United Nations Children's Fund (UNICEF) reports indicate that in certain countries in the Asia-Pacific region proprietors of brothels have specifically sought out deaf girl children and adolescents, with the idea that such young people will be less able to communicate their distress or find their way back to their homes.

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[34] Prison Reform Trust, "Bromley briefings prison factfile" (December 2011).

[35] Janet I. Warren and others, "Personality disorders and violence among female prison inmates", *The Journal of the American Academy of Psychiatry and the Law* (2002), pp. 502 and 503.

[36] Disabled Women's Network Ontario, "Q & A: how are women with disabilities discriminated against?", Canadian Association of Elizabeth Fry Societies. .

[37] See in particular *Price* versus *The United Kingdom*, Application No. 33394/96, European Court of Human Rights (2001); *Mouisei v. France*, Application No. 67263/01, European Court of Human Rights (2003); *Brough v. Australia*, United Nations Human Rights Committee Communication No. 1184/2003 (2006).

[38] *Price v. the United Kingdom*, European Court of Human Rights (2001).

[39] Beth Ribet, "Naming prison rape" (see footnote 30 above). The mere perception of a physical, psychiatric or cognitive disability is sufficient to place an individual at greater risk of sexual victimization.

[40] Nora E. Groce, "Rape of individuals with disability: AIDS and the folk belief of virgin cleansing", *The Lancet*, vol. 363, issue 9422 (22 May 2004), 1663 and 1664.

One report notes that the proportion of child prostitutes who had mild developmental disabilities was six times greater than what might be expected from the incidence in the general population.[41]

D. Causes and consequences

59. The causes of violence against women with disabilities originate in social norms about the nature and type of disability and gender roles.[42] Women with disabilities face many barriers to escaping, resisting, preventing or obtaining redress for violence. Such barriers include, but are not limited to, emotional and financial dependency on the abuser; unwillingness to be stigmatized; fears regarding child custody or single-parenthood; inaccessibility or unavailability of violence prevention programmes and facilities; fear or loss of assistive devices and other supports; concerns about being believed when disclosing the abuse; and reluctance to take any action that may escalate the violence. Also when they seek assistance from police or other members of the community, their complaints may not be taken seriously or may be disbelieved, due to stigma and stereotyping.

60. Persons with physical disabilities may be more dependent on attendant care and more dependent on the abuser, physically, emotionally or financially, for care than other groups (see A/61/122/Add.1 and Corr.1). In addition, persons with disabilities are traditionally and incorrectly seen by society to be asexual.[43] This can lead to greater levels of sexual violence as they are less likely to be believed when they report such violations. Some women with disabilities may be unable to defend themselves, lack access to self-defence training or be unable to physically flee the site of violence.[44] They may therefore become particularly "easy" targets for perpetrators of violence.[45]

61. Women with disabilities face specific discrimination and targeted violence primarily because of their disability status, owing to bias among individuals and communities. For example, in some cultural and religious traditions disability is viewed as a symbol of "evil" or "sin" committed by the person or family members, thus justifying violence.[46]

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[41] UNICEF, "Violence against disabled children", United Nations Secretary-General's report on violence against children, Thematic Group on Violence against Disabled Children; findings and recommendations (2005). Available from http://www.unicef.org.

[42] Stephanie Ortoleva, "Recommendations for action to advance the rights of women and girls with disabilities in the United Nations system" (2011).

[43] S. Nemeth, "Society, sexuality, and disabled/ablebodied romantic relationships", in *Handbook of Communication and People with Disabilities*, D. O. Braithwaite and T. L. Thompson, eds. (Mahwah, New Jersey, United States, Lawrence Erlbaum, 2000).

[44] Leslie Myers, "People with disabilities and abuse" (Independent Living Research Utilization). Available from http://www.ilru.org; Astrid Aafjes, "Empowering girls and women through sport and physical activity" (Women Win).

[45] J. C. Chang and others, "Helping women with disabilities and domestic violence: strategies, limitations, and challenges of domestic violence programs and services", *Journal of Women's Health* (2003); C. A. Howland et. al., "Programs delivering abuse intervention services to women with disabilities (Houston, Texas, United States, Center for Research on Women with Disabilities, 2001).

[46] Lisa Alvares and others, "Reproductive health justice for women with disabilities", Center for Women Policy Studies (2011).

62. Women with disabilities may lack access to education, financial independence and information on how to report incidents of violence and on how to recognize and address violence, including sexual violence (see A/61/122/Add.1 and Corr.1). Also, police and law enforcement agencies may not take appropriate action to prevent or respond to such violence. Women with disabilities may be reluctant to report violence, so as to avoid discrimination, retribution, institutionalization or the loss of economic and other supports. Perpetrators may believe that such assaults will not be discovered or that the testimonies of the women with disabilities will not be credible in law enforcement and court systems.

63. Without accessible information about different programmes that provide legal aid or even basic information about the justice system, women with disabilities may not be able to claim their rights.[47] Even if women with disabilities are aware of their legal rights, the cost of legal assistance may be prohibitive for those who are economically disadvantaged. If they are able to secure the services of an attorney, the lawyer may be unaware of how to ensure that the lawyer-client relationship reaches its full potential. For example, lawyers may not always provide information in Braille or other accessible forms of communication, or provide adequate sign language interpreter services.[47] Finally, few law schools require or provide training in working with clients with disabilities or even a course requirement for disability law in general.[48] Therefore, many lawyers will have little practical or academic experience that furthers their client's interests, needs and challenges.

64. Women with disabilities may be more likely to have low self-esteem, a risk factor for domestic and other forms of violence.[49] Popular media images throughout the world contribute to the presumption that the bodies of women with disabilities are unattractive, asexual and outside the societal ascribed norms of "beauty". It also describes the "normal" female body as the presence of high cheekbones, even skin tones, long legs, and the absence of fat, wrinkles, physical disabilities and deformities.[50] This contributes to the undervaluing of women with disabilities, as well as self-devaluation by women of their own bodies, whether they have disabilities or not. Many images only depict people with disabilities as deserving of pity, thus further stigmatizing them.[51]

65. Armed conflict generates injuries and trauma that can result in disabilities and can also increase the severity of existing disabilities. For women incurring injuries, the situation is often exacerbated by delays in obtaining health care and longer-term rehabilitation. According to the 2011, *World Report on Disability*, humanitarian organizations in conflict situations do not always respond promptly and effectively, and the needs of families and caretakers are not always taken into account.

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[47] Stephanie Ortoleva, "Inaccessible justice" (see footnote 27, above).

[48] Frances Gibson, "Article 13 of the Convention on the Rights of Persons with Disabilities: a right to legal aid?", *Australian Journal of Human Rights*, vol. 15, No. 2 (2010).

[49] Donna R. Walton, "What's a leg got to do with it: black, female and disabled in America", *Disability Studies Quarterly*, vol. 22, No. 1 (2002), p. 74.

[50] Jean Kilbourne, "Beauty and the beast of advertising"; *Women in culture: a women's studies anthology*, L. J. Peach, ed. (Blackwell Publishing Inc., 1998); Killing us softly: advertising and the obsession with thinness, in *Feminist Perspectives on Eating Disorders*, P. Fallon, M. Katzman and S. Wooley, eds. (New York, Guilford Press).

[51] J. Nelson, "The invisible cultural group: images of disability", in *Images that Injure: Pictorial Stereotypes in the Media*, P. M. Lester, ed. (Praeger, 1996), pp. 119-125.

66. Women with disabilities face problems with representation and may fail to comport with society's view on women's roles generally, leading to invisibility and exclusion from meaningful participation in society.[52] Women with disabilities may also be viewed as childlike and presumed to be incompetent, which prevents them from reaching their potential as full and equal members of the community.[53]

67. Women with disabilities have fewer career opportunities owing to employer unwillingness to provide relevant accommodations; they receive lower pay; and they may be forced to take less prestigious career paths in order to be able to obtain employment.[54] Women with disabilities who have experienced violence are at increased risk of unemployment since the abuser may harass or intimidate them in the workplace, harass other employees or prevent them from going to work at all, as a mechanism of control that can result in loss of employment.

68. Women with disabilities who have experienced violence are at increased risk of homelessness. When women with disabilities attempt to flee the abusive situation (or are forced to leave the home of the abuser, which is another form of abuse), they often lose their homes. Since shelters are often inaccessible, they may have no alternative other than the streets or their abusive environment. Furthermore, the social isolation imposed by the abuser during the abuse results in the woman with disabilities severing relationships with family, friends and other support systems that could help in such situations.

69. Women with disabilities have more limitations on access to sexual and reproductive health care. Often health-care providers see them as asexual, thereby concluding that they do not require certain health-care services.[55] An analysis of the data contained in the World Health Organization World Health Survey shows a significant difference between men and women with disabilities and people without disabilities in terms of the attitudinal, physical, and system level barriers faced in accessing care.

E. Normative framework

1. International law and policy[56]

70. Early efforts by the United Nations in the 1970s included the adoption of the Declaration on the Rights of Mentally Retarded Persons (General Assembly resolution 2856 (XXVI)), followed by the Declaration on the Rights of Disabled Persons (Assembly resolution 3447 (XXX)). Those non-binding instruments reflect an important development in terms of placing disability on the international agenda, but they did not fully reflect existing human rights principles.

71. The Declaration on the Rights of Mentally Retarded Persons reflected a paternalistic medical and charity model of disability, while the Declaration on the Rights of Disabled People adopted a human rights approach as regards equal

[52] Johanna Bond, "International intersectionality" (see footnote 4 above).

[53] Disability Discrimination Legal Service, "Beyond belief" (see footnote 25 above).

[54] See *Human Rights and Disabled Persons* (United Nations publication, Sales No. E.92.XIV.4).

[55] Michelle Fine and Adrienne Asch, "Disabled women" (see footnote 3 above).

[56] Paras. 70-86 are based on: Janet E. Lord and Stephanie Ortoleva, "International norms and standards on disability: an overview of the current framework", background technical paper submitted to the secretariat of the Convention on the Rights of Persons with Disabilities (2010).

treatment, access to services, the development of capabilities, and the acceleration of social integration.

72. The International Year of Disabled Persons, adopted in 1981 (General Assembly resolution 36/77), the World Programme of Action concerning Disabled Persons (Assembly resolution 37/52) and the Decade of Disabled Persons 1983-1992 (Assembly resolution 37/53), influenced and shaped the adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Assembly resolution 48/96). The Standard Rules provide a basis for technical and economic cooperation among States, the United Nations and other international organizations. They note the existence of obstacles to rights realization; the responsibility of States to take action to remove such obstacles; and the role of persons with disabilities and their organizations in the removal of barriers. They also acknowledge that the population of persons with disabilities is diverse, thus implicitly acknowledging groups such as women with disabilities and their experiences of multiple forms of discrimination.[57]

73. The Convention on the Rights of Persons with Disabilities was adopted in 2006 and entered into force in 2008. The preamble acknowledges that disability is an evolving concept, and that the full and effective participation in society on an equal basis with others is negatively impacted by the interaction between persons with impairments and the attitudinal and environmental barriers that exist. The Convention is more progressive than the Standard Rules in its purpose to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. It also reflects the "nothing about us without us" principle of inclusion of persons with disabilities.

74. The principle of non-discrimination in article 2 encompasses the commitment not to engage in discrimination on the basis of disability and to take steps to counter both direct and indirect forms of discrimination. In addition to prohibiting discrimination both on the basis of disability and other grounds, article 5 requires States to ensure the provision of reasonable accommodation, in order to promote equality and eliminate discrimination.

75. The Convention adopts a gender perspective in the preamble and in articles 3, 6, 8, 16 and 25.[58] It explicitly mandates the inclusion of women in all of the rights enumerated in the Convention, and therefore addresses the fact that the Convention on the Elimination of All Forms of Discrimination against Women does not explicitly reference women with disabilities in its core provisions.

76. The Convention on the Rights of Persons with Disabilities and Convention on the Elimination of All Forms of Discrimination against Women share many common principles, such as the overall obligations required of States under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women and article 4 of the Convention on the Rights of Persons with Disabilities. Both Conventions require States parties to enact legislative and substantive protections for women and/or persons with disabilities. Article 5 of the Convention on the

[57] *Human Rights and Disability: the Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability* (United Nations publication, Sales No. E.02.XIV.6).

[58] M. V. Reina, M. Adya and P. Blanck, "Defying double discrimination", *Georgetown Journal of International Affairs* (2007).

Rights of Persons with Disabilities and article 4 of the Convention on the Elimination of All Forms of Discrimination against Women include provisions authorizing the use of special/specific measures to expedite and ensure the achievement of equality between the sexes, including women with disabilities. Article 8 of the Convention on the Rights of Persons with Disabilities and article 5 of the Convention on the Elimination of All Forms of Discrimination against Women emphasize the negative role that stereotypes can play in the lives of persons with disabilities, including women with disabilities, and women in general. Under both Conventions, States have the responsibility to combat/eliminate stereotypes, prejudices and harmful practices. In article 6, the Convention on the Rights of Persons with Disabilities recognizes that gender and disability stereotypes coincide to have a compounded effect on women with disabilities.

77. Two crucial aspects of human rights, legal capacity and access to justice, are incorporated in both Conventions, largely drawing on the principles of autonomy or self-determination. In the Convention on the Rights of Persons with Disabilities, articles 12 and 13 address those issues, and in the Convention on the Elimination of All Forms of Discrimination against Women article 15 addresses equality before the law. The Convention on the Rights of Persons with Disabilities incorporates both concepts of capacity to be a person before the law and legal capacity to act.

78. Article 16 of the Convention on the Rights of Persons with Disabilities, on freedom from exploitation, violence and abuse, specifically addresses the problem of gender-based offences. It provides for the protection of that freedom; educational support for persons with disabilities and their families; monitoring of facilities and programmes to serve persons with disabilities; prevention strategies; recovery programmes; and prosecution of crimes involving exploitation, violence and abuse against such persons. Additionally, it includes provisions regarding the establishment of gender and age-specific supports. Article 25 is also relevant to the issue of violence against women, in recognizing that persons with disabilities have the right to the enjoyment of the highest attainable standard of health, without discrimination on the basis of disability. This includes access to gender-sensitive health services and health-related rehabilitation, sexual and reproductive health and population-based public health programmes, all of which should be provided as close as possible to the individual's community.

79. Article 15 of the Convention on the Rights of Persons with Disabilities, requires that States parties take effective measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment, in particular with regard to being subjected to medical or scientific experimentation without free consent. The Committee against Torture has acknowledged that certain acts against persons with disabilities, such as imprisoning or detaining them, would constitute torture or ill-treatment.

80. Article 23 of the Convention on the Rights of Persons with Disabilities identifies that persons with disabilities have the right to retain fertility on an equal basis with others. Furthermore, sterilization cannot be made a condition for access to medical care or other benefit.

81. Articles 25 and 26 of the Convention on the Rights of Persons with Disabilities address disability prevention and rehabilitation, as an aspect of full and comprehensive human rights protection for persons with disabilities, thereby ensuring equal access and accessibility to all public health programmes.

82. As regards the trafficking of women and girls with disabilities, two provisions of the Convention on the Rights of Persons with Disabilities can be considered applicable, although they do not directly refer to the issue. Article 16 and article 27, on work and employment, can be interpreted to apply to situations of trafficking. Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women addresses the suppression of trafficking and exploitation of women in general.

83. Article 11 of the Convention on the Rights of Persons with Disabilities requires that States must take all necessary measures to ensure the protection and safety of persons with disabilities in situations of armed conflict, humanitarian emergencies, natural disasters, and other situations of risk.

84. In general recommendation No. 24, the Committee on the Elimination of Discrimination against Women also discusses issues of concern to women with disabilities. The Committee recognizes that societal factors may be determinative of health status and that special attention should be given to the health needs and rights of women with disabilities, among other vulnerable groups. General recommendation No. 27 pertains to the protection of the human rights of older women and addresses women with disabilities by discussing the double discrimination and gender stereotyping older women with disabilities face, especially in regard to their access to education, health-care services, legal services and their increased susceptibility to violence. General recommendation No. 28 focuses on the core obligations of States parties under article 2 and discusses the enhanced vulnerability for discrimination that women with disabilities face in civil and penal laws, regulations and customary laws and practice. *The Declaration on the Elimination of Violence against Women 1993* (see General Assembly resolution 48/104) also makes reference to violence and women with disabilities.

85. General comment No. 5 of the Committee on Economic, Social and Cultural Rights formulates obligations of States to ensure equal rights and to eliminate discrimination against persons with disabilities in numerous areas. Significantly, the Committee articulated a connection between non-discrimination and the duty to provide reasonable accommodation. Furthermore, the Committee has stated that forced sterilization of women and girls with disabilities breaches article 10 of the International Covenant on Economic, Social and Cultural Rights.

86. In addition, the Human Rights Council Special Rapporteur on the right to education dedicated his 2007 thematic report to the issue of the right of persons with disabilities to inclusive education (A/HRC/4/29, paras. 8 and 76). He found that literacy rates for women and girls with disabilities were significantly lower than for men and boys, and that women and girls were generally subjected to more discrimination. Similarly, in his 2005 thematic report, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, focused on the right to health of persons with mental disabilities (E/CN.4/2005/51, paras. 12 and 49) and found that women with intellectual disabilities were especially vulnerable to forced sterilization and sexual violence. He advocated for measures to protect them from violence and other right to health-related abuses, whether occurring in private health-care or support services. Finally, the Special Rapporteur to monitor the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities reports annually to the

Commission for Social Development and has mainstreamed the issue of women and disabilities in his reports (see E/CN.5/2011/9).

2. Regional conventions and mechanisms

87. The African Charter on Human and Peoples' Rights (Banjul Charter) has broad provisions that provide for equality of all, including women. Article 18 of the Banjul Charter addresses States obligations to eliminate discrimination and to ensure the protection of rights of women and girls. Article 28 places a duty on individuals to respect others without discrimination. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted in 2003 and entered into force in 2005. Article 23 specifically protects women with disabilities, provides them the right to freedom from violence and discrimination and imposes a duty on the State, inter alia, to treat women with disabilities with dignity.

88. With respect to Europe, both the Council of Europe and the European Union, have their own scheme of human rights instruments. The European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force in 1953, is the main European human rights convention. Several additional Protocols have been added to its substantive and procedural provisions.

89. In 2007, the European Parliament adopted resolution 2006/2277(INI), on the human rights of disabled people. The Council of Europe has not adopted any specific human rights instruments on disabled persons, but the European Social Charter explicitly mentions disabled persons as bearers of human rights. The concept of human rights and disability as contained has been revised. Article 15, as revised, was adopted in 1996 and ensures the right of persons with disabilities to independence, social integration and participation in the life of the community.

90. The recent Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence provides measures to protect the rights of victims, without discrimination on any ground, including disability. The Convention prohibits performing an abortion on a woman without her prior and informed consent or performing surgery that has the purpose or effect of terminating a woman's capacity to naturally reproduce, without her prior and informed consent or understanding of the procedure.

91. In Asia, the Economic and Social Commission for Asia and the Pacific proclaimed the Asian and Pacific Decade of Disabled Persons (1993-2002) in 1992. The goal of the initiative was to promote the human rights of disabled persons in the region. In 2002, the Decade was extended for an additional 10 years (2003-2012) in order to further and consolidate the gains achieved thus far.

92. The 1948 American Declaration of the Rights and Duties of Man and the 1969 American Convention on Human Rights are the relevant instruments for the Americas. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 focuses on the obligation of States to promote social, economic, and cultural human rights. It includes the right to social security, as a protection from the consequences of old age and of disability, which prevents a person from securing the means for a dignified and decent existence.

93. In 1999, the Organization of American States adopted the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities. It is the only human rights treaty that defines the term disability and the phrase "discrimination against persons with disabilities". Its goals include full integration of and the furthering of justice for the disabled through legislation, social initiatives and education for the disabled and for others regarding acceptance of persons with disabilities. Furthermore, it calls on States to work on a priority basis, including on prevention of all forms of preventable disabilities and early detection and intervention, treatment and rehabilitation for persons with disabilities.[59]

IV. Conclusion

94. Ratification of the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women and other international law instruments is widespread. However, it has been difficult to assess effective implementation of those instruments with regard to preventing and responding to violence against women with disabilities.

95. Most States lack a specific and comprehensive law, policy or programme on persons with disabilities in general or on women with disabilities in particular. States that have a disability law do not specifically address the rights of women with disabilities in general, or violence specifically. States may also have a specific law on violence against women that generally provides remedies for all women, within a non-discriminatory framework. Unfortunately, such laws are not effectively implemented in respect of women with disabilities.

96. Very few States have established dedicated institutional mechanisms, programmes or strategies such as national committees or councils on women and disabilities, although some have developed strategies based on the research conducted on violence against women with disabilities.

97. At the non-governmental organization level, there are dedicated organizations or coalitions that conduct research and provide services and training. Innovative use of the Internet has also led to the development of interactive websites where readers share information and experiences.

V. Recommendations

98. **The Special Rapporteur recommends the following measures:**

(a) **States should ensure an empowerment perspective, as opposed to a vulnerability perspective, and must apply a social model of disability, as opposed to a medical or charity model, within prevention and response work on violence against women with disabilities;**

[59] Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, resolution 1608 (XXIX-099).

(b) **States should revoke any remaining laws that discriminate on the basis of sex/gender against women with disabilities and address gender bias against women with disabilities in the administration of justice;**

(c) **States should improve and expand disaggregated data collection (gender, age, disability), including on the prevalence, manifestations, causes and consequences of violence against women with disabilities;**

(d) **Appropriate training materials on the prevention of and response to violence against women with disabilities for all sectors should be developed, in collaboration with women with disabilities, thereby enhancing the relevance of the materials and the skills of disabled peoples;**

(e) **Country-level reforms to improve health-care services and facilities in general, including in respect of sexual and reproductive health, should be adopted. More specifically, reforms are necessary in order to reduce unnecessary imprisonment of individuals with disabilities;**

(f) **States should ensure that the justice sector is responsive to and supportive of women with disabilities who report cases of violence; should support innovative justice services, including one-stop shops, legal aid and specialized courts, in order to ensure substantive and procedural access to justice; and should involve women with disabilities in shaping and restructuring the legal system;**

(g) **Good practices in respect of alternatives to prison custody, for people with disabilities, should be developed;**

(h) **Efforts should be made to ensure that publications, presentations and other media products feature women with disabilities, thereby recognizing the importance of media images in changing perceptions, eliminating discrimination and ending violence;**

(i) **Women with disabilities should be allowed the opportunity and provided with the necessary accommodations to enable them to participate fully in forums discussing the empowerment of women and gender equality. Collaboration within women's rights groups and disabled peoples organizations and with other stakeholders involved in activities to combat violence against women should be enhanced with a view towards including women with disabilities in related dialogue, strategy and institution-building processes;**

(j) **States should be encouraged to respond to requests for information by relevant United Nations mechanisms;**

(k) **United Nations agencies and programmes should be increasingly engaged in the issue of violence against women with disabilities, including in the production of specific reports on the implementation of the Convention on the Rights of Persons with Disabilities;**

(l) **Establishment of a mechanism by which the special procedures of the Human Rights Council can collaborate with the Special Rapporteur on disability of the Commission on Social Development should be encouraged.**

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Eradication of poverty and other development issues

Promotion of ecotourism for poverty eradication and environment protection

Note by the Secretary-General

The Secretary-General hereby transmits the report of the Secretary-General of the World Tourism Organization on the promotion of ecotourism for poverty eradication and environment protection, in accordance with General Assembly resolution 65/173.

* A/67/150.

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Report of the Secretary-General of the World Tourism Organization on the promotion of ecotourism for poverty eradication and environment protection

Summary

The present report is submitted in response to General Assembly resolution 65/173 on promotion of ecotourism for poverty eradication and environment protection. Ecotourism, a term used to describe tourism for appreciation of natural areas and associated traditional cultures, follows the principles of sustainable tourism. Sustainable tourism is defined as tourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities. It applies to all forms of tourism in all types of destinations, including mass tourism and the various niche tourism subsectors, including ecotourism. In the outcome document of the United Nations Conference on Sustainable Development, the participants recognized the need to support sustainable tourism activities and relevant capacity-building that promoted environmental awareness, conserved and protected the environment and improved the welfare and livelihoods of local communities.

In preparing the present report, the secretariat of the World Tourism Organization sought and used input from States Members of the United Nations, relevant specialized agencies, United Nations bodies and other international organizations, in addition to reviewing their existing relevant initiatives and projects. Several United Nations bodies, specialized agencies and other international organizations have programmes or support activities that are relevant to the ecotourism, nature-based tourism, rural tourism and community-based tourism elements of the tourism sector, poverty alleviation and environmental protection.

With regard to tourism and poverty alleviation, key lessons learned are that, if poor people and local and indigenous communities are to be able to benefit from the opportunities offered by tourism, there is a need to take into account commercial and market factors, which affect the successful development of tourism in any area, and to address wider constraints that keep people in poverty. Furthermore, given that the market for tourism is highly dynamic, it is important for national tourism plans and policies to take into account market trends and to focus on those subsectors of tourism in which they have a competitive advantage, as well as to ensure that tourism activities and development are sustainable in the long term.

The present report provides recommendations to assist in promoting sustainable tourism, including ecotourism, as a tool for fighting poverty and promoting sustainable development and environmental protection.

I. Introduction

1. The World Tourism Organization (UNWTO) is the specialized agency of the United Nations system vested with a central role in promoting the development of responsible, sustainable and universally accessible tourism. In General Assembly resolution 65/173 on promotion of ecotourism for poverty eradication and environment protection, the Secretary-General was requested to submit to the Assembly at its sixty-seventh session, in collaboration with UNWTO and other relevant United Nations agencies and programmes, a report on the implementation of the resolution, including recommendations on ways and means to promote ecotourism as a tool for fighting poverty and promoting sustainable development. UNWTO was subsequently requested to take the lead in the preparation of the report.

2. UNWTO sought and used input from States Members of the United Nations, relevant specialized agencies, United Nations bodies and other international organizations, in addition to reviewing their existing relevant initiatives and projects. The present report is based on the responses received and information acquired through this process and on relevant publications and documents of UNWTO and other United Nations agencies and institutions. A total of 48 Member States responded to the questionnaire, including 13 least developed countries, 8 small island developing States and 14 African countries, as follows: Australia, Austria, Bhutan, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cape Verde, Colombia, Comoros, Croatia, Cyprus, Dominican Republic, Egypt, Ethiopia, Finland, Gambia, Ghana, Greece, Haiti, Hungary, Iran (Islamic Republic of), Israel, Jamaica, Kenya, Latvia, Mauritius, Mexico, Monaco, Nicaragua, Niger, Poland, Romania, Russian Federation, Samoa, Slovakia, Slovenia, Spain, Sri Lanka, Sudan, Togo, Trinidad and Tobago, Turkey, United Arab Emirates, United Republic of Tanzania, Venezuela (Bolivarian Republic of) and Yemen.

3. The importance of the subject and the timeliness of its consideration is underscored by the fact that, at the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, the participants recognized in the outcome document, adopted by the General Assembly in its resolution 66/288, the need to support sustainable tourism activities and relevant capacity-building that promoted environmental awareness, conserved and protected the environment and improved the welfare and livelihoods of local communities. They also encouraged the promotion of investment in sustainable tourism, including ecotourism and cultural tourism, to assist in that regard.

A. Definitions of ecotourism and sustainable tourism[1]

4. Sustainable tourism is defined as tourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities. Sustainable tourism development guidelines and management practices are applicable to all forms of tourism in all types of destinations, including mass tourism and the various niche tourism subsectors, including ecotourism. Sustainability principles refer to the

[1] This section is based on a publication by UNWTO and UNEP: *Making Tourism More Sustainable: A Guide for Policy-Makers* (Madrid and Paris, 2005).

environmental, economic and sociocultural aspects of tourism development, and a suitable balance must be established between these three dimensions to guarantee its long-term sustainability. Thus, sustainable tourism should:

(a) Make optimal use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes and helping to conserve natural heritage and biodiversity;

(b) Respect the sociocultural authenticity of host communities, conserve their built and living cultural heritage and traditional values, and contribute to intercultural understanding and tolerance;

(c) Ensure viable, long-term economic operations, providing socioeconomic benefits to all stakeholders that are fairly distributed, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation.

5. The development of sustainable tourism requires the informed participation of all relevant stakeholders and strong political leadership in order to ensure wide participation and consensus-building. Achieving sustainable tourism is a continuous effort that requires constant monitoring of impacts and the taking of preventive and/or corrective measures whenever necessary. Sustainable tourism should also maintain a high level of tourist satisfaction and ensure that tourists have a meaningful experience, raising their awareness of sustainability issues and sustainable tourism practices.

B. Relationship between ecotourism, sustainable tourism and nature-based tourism and its evolution over the past decade

6. There have been major changes within the tourism sector over the past decade, including changes to the types of tourism demanded by consumers, the development of tourism from emerging markets, the expansion of the tourism sector into new areas and changes in the way in which tourism products are marketed to and purchased by consumers, in particular through the Internet. The same period has seen widespread recognition throughout the tourism sector of the need for sustainable tourism and for action to implement sustainable tourism practices, as demonstrated by the establishment of the Tour Operators' Initiative for Sustainable Tourism Development, which is supported by the United Nations Environment Programme (UNEP), UNWTO and the United Nations Educational, Scientific and Cultural Organization (UNESCO).[2]

7. Over the past decade, Governments, the tourism sector, destinations and other stakeholders have recognized the importance of ensuring the sustainability of all forms of tourism, including ecotourism. Tourism businesses and Governments have become aware of the effects of tourism on host communities and environments and have begun to implement practices and policies to increase the benefits to host communities and to minimize the adverse impacts on the environment.

8. Input received from Member States shows that ecotourism, just as all other tourism subsectors, is viewed within the framework of sustainable tourism. This is consistent with paragraphs 130 and 131 of the outcome document of the United

[2] See www.toinitiative.org.

Nations Conference on Sustainable Development, which deal with sustainable tourism. The input received indicates that the term "ecotourism" is used in most countries to refer to nature-based tourism in rural or protected areas and to community-based tourism and that countries have focused on all those subsectors of tourism in which they have a competitive advantage in terms of their tourism assets, market demand and ability to increase economic benefits, minimize adverse environmental effects and generate benefits for and encourage the participation of local and indigenous communities in tourism.

9. In two compilations of examples of sustainable development of ecotourism published by UNWTO in 2001 and 2003,[3] covering 110 cases, it was found that there was a broad interpretation of ecotourism. The case studies included examples of nature-based tourism, rural and agritourism, adventure tourism and cultural tourism, small luxury hotels with nature-based attractions, ecotour and adventure-tour operators, private reserves and conservation areas, and community-based tourism. In 2012, UNWTO also prepared a compendium of best practices and recommendations for ecotourism in Asia and the Pacific on the basis of an assessment of the practices of 26 ecotourism organizations and private companies and six national initiatives in that region. The compendium illustrates how tourism operators are aiming to meet the principles of sustainable tourism, as benchmarked against the Global Sustainable Tourism Criteria (see para. 25 of the present report). The organizations and companies assessed included a national park, lodges, resorts, hotels and tour operators.

10. Detailed market studies on the ecotourism subsector were conducted by UNWTO in 2001 and published in 2002, the International Year of Ecotourism. No similarly comprehensive market studies have since been conducted. The studies were carried out in seven major outbound tourism markets: Canada, France, Germany, Italy, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The overall conclusions reached were that the use of the term "ecotourism" in marketing and promotion by tour operators remained relatively limited and that the tourism sector most closely matching the concept of ecotourism represented a relatively small share of the market.

11. Demand for tourism is rising rapidly, with global growth in international tourism predicted to average between 3 and 4 per cent per annum over the coming decade.[4] Domestic tourism has the potential to grow even more quickly. Such growth increases the demand for development of new tourism facilities, with consequent changes in land use, and puts pressure on local communities and environmental resources in areas in which such development is taking place. Much of this demand is driven by the private sector, which has an important role to play in ensuring that existing and new activities and operations in the tourism sector implement sustainable tourism approaches and practices, including by making effective contributions to poverty alleviation and delivery of equitable benefits to local and indigenous communities.

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[3] UNWTO, *Sustainable Development of Ecotourism — A Compilation of Good Practices* (Madrid, 2001) and UNWTO, *Sustainable Development of Ecotourism — A Compilation of Good Practices in SMEs* (Madrid, 2003).

[4] UNWTO, *Tourism towards 2030* (Madrid, 2011).

C. Tourism and poverty alleviation

12. The objectives of poverty alleviation through tourism include generating jobs and income for poor people and communities, both directly and in the supply networks providing goods and services to tourism businesses, improving access to infrastructure and services and contributing to the attainment of the Millennium Development Goals.

13. UNWTO has identified seven main mechanisms through which the poor can benefit from tourism:

(a) Employment of the poor in tourism enterprises;

(b) Supply of goods and services to tourism enterprises by the poor or by enterprises employing the poor;

(c) Direct sales of goods and services to visitors by the poor (informal economy);

(d) Establishment and running of small, micro or community-based tourism enterprises or joint ventures by the poor (formal economy);

(e) Redistribution of proceeds from tax or charge on tourists or tourism enterprises;

(f) Voluntary giving and support by tourists or tourism enterprises;

(g) Investment in infrastructure stimulated by tourism also benefiting the poor in the locality, directly or through support to other sectors.[5]

14. The successful development of tourism in a locality depends on the accessibility of that locality to major sources of tourists (determined by transport infrastructure, reliability and travel times), availability of suitable accommodation, considerations of health and security and availability of reliable local businesses supporting tourism.[6] Tourism can contribute to poverty alleviation where it results in more people being able to meet their basic needs. This will generally be through increased local employment or small business opportunities linked to tourism, whether directly or through supply of goods and services to the tourism sector.

15. Some barriers preventing people from benefiting from tourism can be overcome by providing training, supporting market and product development, providing grants or loans through mechanisms to which poor people can gain access and at rates that poor people can afford, allocating secure property rights to poor people and communities, including indigenous peoples, and reforming national policies. While the tourism sector can provide training and also support market and product development, the removal of other barriers depends on actions by Governments.

16. Key lessons learned from tourism and poverty alleviation projects are that, if poor people and local and indigenous communities are to be able to benefit from the opportunities offered by tourism, there is a need to take into account commercial and market factors, which affect the successful development of tourism in any area,

[5] UNWTO, *Tourism and Poverty Alleviation — Recommendations for Action* (Madrid, 2004).

[6] UNEP, *Forging Links between Protected Areas and the Tourism Sector. How Tourism Can Benefit Conservation* (Paris, 2005).

and to address wider constraints that keep people in poverty. Furthermore, where it is identified that tourism could contribute effectively to poverty alleviation, poor people and communities should be involved in planning and decision-making concerning tourism projects and, should a project proceed, in its operational stages.

D. Tourism and indigenous peoples

17. The UNWTO Global Code of Ethics for Tourism highlights that tourism activities should respect the equality of men and women and should promote human rights and, more particularly, the individual rights of the most vulnerable groups, notably children, the elderly, the handicapped, ethnic minorities and indigenous peoples. Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples recognizes the specific needs of indigenous peoples and that historic injustices have prevented them from exercising, in particular, their right to development in accordance with their own needs and interests. The Global Compact and the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex) provide a practical approach that can be applied to tackle such issues in the tourism sector and are supported through the UNWTO Tourism Partnerships for Development programme.[7]

18. The Permanent Forum on Indigenous Issues, in its 2010 publication *State of the World's Indigenous Peoples*, notes that indigenous peoples frequently do not benefit from tourism-related activities but do bear their costs, which can include undermining of traditional modes of sustenance, marginalization and adverse cultural effects and often are economically and culturally devastating.

19. At the same time, it is noted that tourism is not inherently negative for indigenous peoples and can be an important source of revenue and job creation, provided that indigenous peoples themselves are directly involved in all decision-making processes regarding tourism on their lands. It is also noted that it is crucial to adhere to the principle of free, prior and informed consent, ensuring that indigenous peoples are fully aware of planned tourism activities on their lands and that they themselves authorize these activities and benefit from them.

20. The same issues regarding tourism and poverty alleviation also apply in relation to tourism and indigenous peoples. Furthermore, tourism activities and development need to be conducted in a manner consistent with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, including the principle of free, prior and informed consent, and with national and international legislation for protection of the rights of indigenous peoples. In addition, community access and/or ownership, especially that of local and indigenous communities, is often not well defined in legislation. Consequently, the development of tourism can be extremely problematic when lands and waters traditionally occupied or used by local people have to be altered to accommodate tourism.

21. The Guidelines on Biodiversity and Tourism Development, adopted in 2004 by the Conference of the Parties to the Convention on Biological Diversity in its decision VII/14, set out the importance of, and mechanisms for, the involvement of local and indigenous communities. They highlight that impact assessment is

[7] See http://icr.unwto.org/en/content/tourpact-tourism-partnerships-development.

imperative for projects that affect the sacred sites of local and indigenous communities, in addition to the lands and waters that are traditionally occupied or used by them, and that sufficient time should be allowed to ensure that all parties are able to participate effectively in the decision-making process. In addition, in its decision VII/16 F, the Conference of the Parties to the Convention endorsed guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or that are likely to have an impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities, known as the Akwé: Kon Voluntary Guidelines. Their implementation is integrated into the Guidelines on Biodiversity and Tourism Development, providing a practical framework in which to tackle many key issues pertaining to tourism and indigenous peoples.

II. International initiatives relevant to ecotourism

22. UNWTO, UNEP, UNESCO, the United Nations Development Programme (UNDP), the United Nations Conference on Trade and Development (UNCTAD), the International Labour Organization (ILO), the Convention on Biological Diversity, the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention) and the Convention on the Conservation of Migratory Species of Wild Animals, among others, have programmes or support activities that are relevant to the ecotourism, nature-based tourism, rural tourism and community-based tourism elements of the tourism sector and to poverty alleviation. They include activities that cover tourism in natural and semi-natural habitats, community-based tourism and the role of tourism in biodiversity conservation and local economic development.

23. The International Task Force on Sustainable Tourism Development, established in 2006 as part of the Marrakech Process on sustainable consumption and production, completed a three-year programme of work that resulted in the implementation of some 40 projects and actions by Task Force members and partners. In 2011, the Task Force was converted into a new global partnership for sustainable tourism to focus on policy, projects, tools and networks for all tourism stakeholders.[8]

24. The Guidelines on Biodiversity and Tourism Development, as referred to in paragraph 21 of the present report, are aimed at making tourism and biodiversity more mutually supportive, engaging the private sector and local and indigenous communities, and promoting infrastructure and land-use planning based on the principles of conservation and sustainable use of biodiversity. The secretariat of the Convention on Biological Diversity has also published a user's manual for the implementation of the guidelines, which contains checklists and tools that can be applied to tourism management planning at the site level and to policy development at the site, local and national levels.

25. The Global Sustainable Tourism Criteria, an initiative led by UNWTO and involving the participation of the United Nations Foundation, UNEP, the Rainforest Alliance and others from the private and public sector, provide a set of voluntary standards representing the minimum to which tourism businesses and destinations

[8] See www.globalsustainabletourism.com.

should aspire in order to protect and sustain the world's natural and cultural resources while ensuring that tourism meets its potential as a tool for poverty alleviation.[9] They are consistent with the UNWTO definition of sustainable tourism. Voluntary certification schemes are now applied throughout the tourism sector and these criteria provide minimum standards for all aspects of tourism, including ecotourism.

26. The UNWTO Sustainable Tourism — Eliminating Poverty initiative[10] promotes poverty alleviation through the provision of assistance to sustainable development projects and makes a contribution to efforts to attain the Millennium Development Goals, in particular those dealing with poverty and hunger, gender equality, environmental sustainability and global partnership. There are now more than 100 projects in 36 developing countries, ranging from assisting communities to develop tourism products to actions to promote tourism in more remote regions with a view to enhancing its local economic impact. Projects are implemented in close collaboration with national tourism authorities, local governments, non-governmental organizations, development organizations and tourism enterprises in the beneficiary countries. In addition, the members of the initiative carry out research and publish reports to provide evidence of the impact of tourism on reducing poverty levels, accompanied by recommendations on how to maximize those impacts. Such materials include a manual on tourism and poverty alleviation that provides practical steps for destinations.

27. The theme of World Wetlands Day 2012 was wetlands and tourism. At its eleventh meeting, held in Bucharest from 6 to 13 July 2012, the Conference of the Parties to the Ramsar Convention adopted resolution XI.7 on tourism, recreation and wetlands. At the same meeting, the secretariat of the Convention launched the publication *Destination Wetlands: Supporting Sustainable Tourism*, prepared in association with UNWTO.

28. The secretariat of the Convention on Migratory Species has published a report on wildlife watching and tourism.[11] The Convention supports conservation projects that include tourism components.

29. UNESCO is establishing a world heritage tourism programme and, in partnership with UNEP and with funding from the private sector and the United Nations Foundation, has carried out a project to create a model for using tourism to promote biodiversity conservation by working with local communities and site managers.

30. The Small Grants Programme is funded by the Global Environment Facility and implemented by UNDP. A total of 1,921 projects supported through the Programme have a sustainable tourism component. Some 15 per cent involve indigenous peoples and around 17 per cent are led by women. Community-based ecotourism projects are a means of reducing poverty and providing sustainable livelihoods so as to conserve biodiversity and achieve global environmental benefits. For example, the community management of protected areas conservation programme supports local and indigenous small and medium-sized enterprises working for the sustainable development of UNESCO World Heritage sites.

[9] See www.gstcouncil.org.

[10] See http://step.unwto.org/en/content/background-and-objectives.

[11] Available from www.cms.int/publications/pdf/CMS_WildlifeWatching.pdf.

31. In 2011, ILO produced a toolkit on poverty reduction through tourism in rural areas as part of its sectoral activities programme on tourism.

32. UNCTAD is carrying out activities supporting sustainable tourism for development in the least developed countries and has published an assessment of foreign direct investment in tourism and a guide for promoting such investment.

33. Established on the initiative of UNWTO in 2010, a steering committee on tourism for development currently comprises eight other United Nations entities: ILO, the International Trade Centre, UNCTAD, UNDP, UNESCO, UNEP, the United Nations Industrial Development Organization and the World Trade Organization. It brings coherence to the efforts of its members in the area of tourism for development, enabling them to coordinate their tourism-related work and maximize its impact. This approach to achieving the Millennium Development Goals builds on the strengths and expertise of each member.

34. The Economic and Social Commission for Asia and the Pacific covers all aspects of poverty eradication, in addition to the promotion of the green economy in the context of inclusive and sustainable development, but does not deal directly with tourism.

III. Key considerations for the promotion of sustainable tourism, including ecotourism

A. Guidelines and regulations

35. Examples of relevant guidelines include the Guidelines on Biodiversity and Tourism Development; voluntary schemes for certification and eco-labelling of sustainable tourism activities and operations, including Global Sustainable Tourism Criteria schemes; and national guidelines, frameworks and regulations covering the tourism sector and general planning, environmental and other legislation. To provide a framework for sustainable tourism, it is particularly important that tourism guidelines, regulations, planning and policies place limits on the use of ecosystem services and, consequently, on levels of development, so as to remain within sustainable levels of use. In addition, they should ensure that host communities, including local and indigenous communities, are consulted about, and able to participate in, sustainable tourism and that the wishes, cultures and social practices of such communities are respected.

B. Investment

36. It is important for sustainability to be integrated into all aspects of tourism development: from the earliest planning stages, in construction and development and in operations. Furthermore, investment in the sector should be channelled to projects and programmes that implement sustainable tourism in practice. The Sustainable Investment and Finance in Tourism Network[12] is working in collaboration with the Global Partnership for Sustainable Tourism, the World Bank, the United Nations Foundation, the Global Environment Facility, UNWTO and other

[12] See www.unep.fr/scp/tourism/activities/sift.

partners to establish a common voluntary standard to encourage greater sustainability in tourism investments by public, private and multilateral investors.

C. Creating small and medium-sized enterprises

37. Small and medium-sized enterprises are important for job creation and economic development in all sectors, including the tourism sector. Many countries and development organizations support the development and strengthening of such enterprises through training, capacity-building and funding. Some programmes and initiatives, such as the UNWTO Sustainable Tourism — Eliminating Poverty initiative, may be specifically targeted at small and medium-sized enterprises in the tourism sector.

D. Facilitating access to finance

38. Much of the economic potential for green tourism is found in small and medium-sized enterprises, which need better access to financing for investing in green tourism.[13] Their single greatest limiting factor for greening, however, is lack of access to capital. Governments and international organizations can facilitate the financial flow to these important actors with an emphasis on contributions to the local economy and poverty reduction. Public-private partnerships can spread the costs and risks of large investments in green tourism. In addition to reducing administrative fees and offering favourable interest rates for green tourism projects, in-kind support, such as technical, marketing or business administration assistance, could be of help.

E. Environmental impact assessment

39. Environmental impact assessment is generally a requirement of national planning legislation that applies to all sectors. National environmental impact assessment standards apply equally to tourism development. Projects below minimum thresholds are often not required to undertake environmental impact assessments as part of the planning process. It should be recalled, however, that the cumulative environmental and social impacts of a series of small developments, which in themselves may be below minimum thresholds for environmental impact assessments, are likely to be significant and therefore need to be taken into account before approval of any individual development is given. Since many tourism projects are initially developed on a small or medium scale, they may therefore not be required to undertake environmental impact assessments. Ideally, overall tourism development plans, based on carrying capacity considerations and market factors, should be elaborated with public participation in advance of further developments and should also be subject to strategic environmental assessments.

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[13] UNEP, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication — A Synthesis for Policy Makers* (Nairobi, 2011), chap. 11.

F. Empowerment of women

40. While no comprehensive studies of women in ecotourism have been carried out, in 2011, UNWTO and the United Nations Entity for Gender Equality and the Empowerment of Women published a global report on women in tourism, in which it was noted that the formal and informal opportunities that tourism provided to women could have a significant impact on poverty reduction in rural communities and that the proportion of women own-account workers was much higher in tourism than in other sectors throughout all regions. It was also found that women were contributing a substantial amount of unpaid labour to home-based tourism businesses as contributing family workers and that unpaid family workers were vulnerable to exploitation. This key area requires further focus when promoting gender equality in tourism, given that women in tourism are typically earning between 10 and 15 per cent less than their male counterparts. Additional work is needed to explore and analyse the situation of women in tourism, including an examination of differences in pay and hours of work, and of women's unpaid work in family tourism businesses.

G. Participation and involvement of local and indigenous communities

41. Sustainable tourism development requires the informed participation of all relevant stakeholders and should ensure that socioeconomic benefits are fairly distributed to all stakeholders, including local and indigenous communities. This concept is set out in the UNWTO definition of sustainable tourism and elaborated, for example, in the Guidelines on Biodiversity and Tourism Development, in which it is emphasized that tourism management should be based on a consultative process involving multi-stakeholder participation, including that of local and indigenous communities.

IV. Tourism and least developed countries, small island developing States and African countries

42. Tourism is a significant economic sector for many least developed countries, small island developing States and African countries. To make the most of the opportunities offered, however, the tourism sector, just as all other sectors, must tackle the many challenges in relation to sustainable development of tourism that these countries may face. Such countries must also ensure that tourism delivers actual benefits to their economies, both nationally and in the communities and localities where it takes place. The challenges faced include limited infrastructure, scant human and financial resources, vulnerability to external economic and environmental factors (including climate change), fragile environments and scarce resources, including fresh water. It is therefore vital to ensure that tourism is correctly planned in these States to avoid adverse environmental and cultural impacts and to maximize the economic and other benefits for affected communities and for national economies.

A. Least developed countries[14]

43. Tourism-related activity has been a prominent feature of economic specialization among least developed countries over the past decade. Accordingly, sustainable tourism needs to be implemented to maximize beneficial development impacts. Least developed countries continue, however, to be faced with severe constraints: for example, insufficient local savings and investment, coupled with the lack of a qualified national workforce, mean that the development of the tourism economy is largely entrusted to foreign actors, resulting in leakage from repatriation of profits and wages to the countries of origin of investors and foreign labour. Such leakage can represent up to 70 per cent of potential tourism revenue and diminishes national benefits from tourism.

44. To overcome these constraints and risks, least developed countries and economic stakeholders need to take joint action to ensure that tourism revenue is equitably shared, that a portion of the input comes from local sources and that effective partnerships are forged between foreign and domestic stakeholders. In addition, tourism, just as any other service activity, must be competitive internationally. Accordingly, the tourism sectors in least developed countries must ensure that the price and quality of their tourism products are appropriate and that they are differentiated from tourism products in competing destinations.

B. Small island developing States[15]

45. The importance of tourism for small island developing States is highlighted in both the 1994 Programme of Action for the Sustainable Development of Small Island Developing States and the 2005 Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States. Tourism has contributed much to the development of such States and, as one of few development options for them, will continue to be extremely important to their future growth. A significant part of the earnings generated by tourism in these States may, however, leak out of their economies, primarily as a result of imports of goods (including food) and services, repatriation of profits by overseas resort developers and hotel owners and remittance of funds by expatriate labour. In some small island developing States, tourism leakages reach as much as 56 per cent of tourism earnings.

46. The fragility and interdependence of coastal zones and the unspoilt areas on which ecotourism is dependent call for careful management, in particular in relation to compatible land uses, water management, coastal zone management and the development of parks and protected areas. Tourism needs to be carefully integrated into the existing cultural and environmental constraints and opportunities present within small island developing States.

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[14] The analysis in this section is based on a compilation of documents of pre-conference events organized by UNCTAD in preparation for the Fourth United Nations Conference on the Least Developed Countries (http://unctad.org/en/docs/aldc2011d1_en.pdf) and the Lisbon Declaration on Sustainable Tourism for Development, UNCTAD, document TD(XI)/PC/6.

[15] The analysis in this section is based on the summary of a special event on the small island developing States tourism, biodiversity and culture nexus in the context of the green economy, held at Headquarters on 27 October 2011 and UNWTO, *Challenges and Opportunities for Tourism Development in Small Island Developing States* (Madrid, 2012).

47. Small island developing States also encounter challenges in relation to limited resources, in particular freshwater resources, and to climate change, which can exacerbate problems associated with limited water supplies and adversely affect the coastal zones that support most of the tourism activities. Furthermore, competing demands for freshwater and other scarce resources could put such resources under even more pressure. In addition to ensuring that small island developing States have sufficient financial means and technical expertise to implement policies to adapt to and mitigate the effects of climate change, it is also important for such policies to be compatible with the role of the tourism sector in those countries.

C. African countries

48. Africa includes many least developed countries and some small island developing States with varying levels of tourism, in addition to countries with more developed economies. Tourism is well developed in Southern and East Africa, parts of North Africa and in island States in the Indian Ocean. Least developed countries and small island developing States in Africa face constraints similar to those in other regions. Furthermore, in African countries with well-developed tourism sectors, tourism is often concentrated in a few locations, meaning that other areas may also experience problems of development, resource availability and infrastructure.

V. Key findings of the survey

A. Planning, policy and regulation

49. Of the respondent countries, 46 reported having tourism policies, 28 of which included specific components on ecotourism. Four countries said that they had no such policies. For example, among least developed countries, small island developing States and African countries, the Comoros has adopted legislation for the sustainable development of tourism in general, and ecotourism, with the aim of protecting wildlife and the environment. Burkina Faso has a national policy for tourism and a sustainable tourism charter. The Gambia has developed a responsible tourism policy, a poverty eradication policy and a tourism development master plan. Within that framework, it has also developed an ecotourism strategy document. Samoa has a tourism development plan that includes an ecotourism component. In the Dominican Republic, sustainable economic development is incorporated into the concept of ecotourism. The national environmental policy of Togo includes a component on developing sustainable tourism in balance with the natural and living environment. Among other countries, ecotourism is part of the Slovenian tourism strategy for 2012-2016, while Romania has a master plan for the development of national tourism and a national strategy for the development of ecotourism. Mexico has a national development plan for tourism and a tourism sectoral programme, through which it promotes the development of nature tourism within a framework of sustainability. Austria noted that ecotourism could be regarded as a part of sustainable tourism with its three pillars (economic, ecological and sociocultural).

50. Several respondents noted that national guidelines and regulations covering all sectors and national laws covering sustainability, human rights, employment and environmental protection apply equally to the tourism sector, including ecotourism.

A total of 17 countries reported appropriate additional guidelines on ecotourism and other aspects of sustainable tourism. For example, among African countries, the Tourism Act passed by Kenya in 2011 provides for the development of guidelines and regulations for various aspects of tourism, including ecotourism, while Ethiopia has published guidelines for community-based ecotourism that encompass sustainable development and involve mechanisms to minimize and mitigate the negative impacts of ecotourism. Egypt has established ecotourism programmes in several protected areas and has drawn up guidelines for ecotourism development in parts of the Red Sea. Among small island developing States and/or least developed countries, Jamaica has formulated a draft policy framework for community-based tourism and Mauritius has established guidelines on site development and design for ecotourism development, including emphasis on zoning, physical development and environmental protection. Burundi reported that it had no ecotourism-specific regulations or guidelines but did encourage sustainable tourism in general. Among other countries, Austria and Israel have developed voluntary guidance for sustainable tourism. Austria has also developed a guidebook on energy management for hotels and restaurants that identifies the potential to save energy in tourism facilities. It is also supporting the sustainable reconstruction of some 1,000 alpine huts that provide a considerable part of the infrastructure for hiking tourism, which is extremely popular. Bosnia and Herzegovina, Latvia and Monaco reported that they had no ecotourism-specific regulations or guidelines, but did encourage sustainable tourism in general.

51. Of the 13 least developed countries that responded, 10 have tourism policies, of which 5 (Bhutan, Burkina Faso, Ethiopia, Gambia and Samoa) include specific components on ecotourism. Three have no such policies. Of the eight small island developing States that responded, seven have tourism policies, of which five (the Dominican Republic, Jamaica, Mauritius, Samoa and Trinidad and Tobago) include specific components on ecotourism; one has no such policy. Of the 14 African countries that responded, 11 have tourism policies, of which 5 (Egypt, Ethiopia, Gambia, Ghana and Mauritius) include specific components on ecotourism. Three have no such policies. Of 27 other countries, 26 have tourism policies, of which 18 (Australia, Austria, Brazil, Brunei Darussalam, Colombia, Greece, Hungary, Iran (Islamic Republic of), Israel, Mexico, Nicaragua, Romania, Slovakia, Slovenia, Spain, Sri Lanka, United Arab Emirates and Venezuela (Bolivarian Republic of)) include specific components on ecotourism. One has no policies on tourism or ecotourism. This indicates that lower proportions of least developed countries, small island developing States and African countries have tourism policies that include specific components on ecotourism.

B. Provision of support to small and medium-sized enterprises

52. Programmes and policies that support small and medium-sized enterprises in general apply also to tourism, including ecotourism. Some countries have specific programmes to support such enterprises in the tourism sector and, where appropriate, local and indigenous communities. Some countries may also obtain funding to support such enterprises from regional bodies or bilateral or multilateral organizations. For example, in Africa, Kenya has established a tourism trust fund to support community-based tourism projects and the Government is also securing funding for community projects from the Sustainable Tourism — Eliminating

Poverty initiative. Among small island developing States and/or least developed countries in other regions, Samoa noted that, although not sector-specific, programmes and schemes were offered locally by financial institutions, development partners and agencies to assist with the development of small and medium-sized enterprises and that assistance was available to help tourism businesses to gain access thereto. In Haiti, the Ministry of Tourism provides support to help tourism businesses to strengthen their capacity and to integrate into the tourism sector, in addition to supporting the training of young people as tourist guides. The Government of Jamaica is implementing a rural economic development initiative through a loan from the World Bank, providing financial incentives for micro and small enterprises with interests in community development through tourism and agriculture. A tourism enhancement fund also provides support to such enterprises for ecotourism investments that foster safe environmental practices.

53. Among other countries, in Brazil, the Ministry of Tourism is working with the national support service for micro and small enterprises to deliver vocational training and support to tourism businesses, including market positioning, marketing and promotion. In Colombia, a productive transformation programme encompasses the nature tourism sector and provides support to projects developed by micro, small and medium-sized enterprises. In Nicaragua, small and medium-sized enterprises have access to credit for their development through a project on agritourism farms. The Ministry of Tourism of Israel provides grants and professional assistance to local entrepreneurs to develop small-scale tourism accommodation facilities and small and medium-sized tourist attractions in rural and peripheral areas. In Australia, the Government supports the development of small businesses in all sectors, including tourism, through a whole-of-government service providing essential information via the Internet on planning, starting and developing a business. Similar support is also available at the level of state and territory governments. In Austria, the Austrian Bank for Tourism Development administers the funding for small and medium-sized enterprises provided by the National Tourism Administration. It focuses on encouraging sustainability, for example, in relation to transport and energy efficiency. In Turkey, a small and medium-sized enterprise development organization contributes to strengthening such enterprises in the tourism sector, for example, by supporting financing, marketing and training. Cyprus has implemented a special financial scheme for the restoration and transformation of traditional buildings into accommodation units, restaurants, workshops and museums. The European Union Leader initiative also provides support for rural economic development through the promotion of local products and businesses.

C. Environmental impact assessment for projects

54. Tourism developments, just as all other developments, are subject to all relevant national legislation, including planning and environmental legislation and requirements for environmental impact assessment, public consultation and business and/or tourism licensing. Environmental impact assessment legislation often, however, sets a size threshold below which assessments are not generally required for developments in any sector, meaning that only larger tourism projects, including ecotourism projects, would be subject to assessments. Regardless of size, however,

all tourism developments and projects are required to comply with other relevant legislation.

55. Among African countries, in Kenya, all tourism projects are subject to environmental impact assessment before approval and all policies, plans and programmes, including in relation to tourism, are subject to strategic environmental assessment. The Government of the United Republic of Tanzania conducts environmental impact assessments for tourism projects through the National Environmental Management Council and the custodians of protected areas (Tanzania National Parks, the Wildlife Division and the Ngorongoro Conservation Area Authority) in accordance with their general management programmes and regulations. The Gambia conducted an environmental impact assessment of its tourism development master plan to optimize its planning of infrastructure development, set tourist capacity and manage the environment. All developments, including ecotourism developments, that are located in fragile and protected areas are required to undergo environmental impact assessments before and during the development process. In Togo, the Environmental Code and the National Action Plan for the Environment set an overall strategic framework for integrating environmental issues and development and the preparation and execution of programmes and projects to ensure the sound management of environmental issues. In the Niger, the Environmental Assessment and Impact Studies Office provides assessments, including in relation to the use of sites for ecotourism.

56. Among other countries, in Australia, the environmental impacts of, among others, individual ecotourism developments are assessed under the Environment Protection and Biodiversity Conservation Act 1999 and state-based environmental assessment legislation, such as the Protection of the Environment Legislation Amendment Act 2011 implemented by the government of New South Wales. In Brunei Darussalam, the Brunei Tourism Development Department and the Brunei Tourism Board work with the Ministry of Industry and Primary Resources to manage the impacts of tourism and the implementation of environmental legislation such as the Forest Act. In Slovakia, individual plans of investors to build facilities that are directly or indirectly related to tourism are subject to environmental impact assessment in accordance with European Union legislation. In Israel, environmental impact assessment is required for every development project, including tourism projects, under the framework of the country's planning and building legislation. In Brazil, environmental impact assessment is an integral part of the environmental licensing process. In Nicaragua, a national target of having women make up 50 per cent of the workforce in all sectors found one of its first applications in the "Ruta del Café" ecotourism project.

D. Participation and involvement of local and indigenous communities, and empowerment of women

57. Policies to promote the full participation and involvement of local and indigenous communities and the empowerment of women cover all sectors and apply equally to sustainable development of tourism, including ecotourism. For example, a key focus of the Tourism 2020 strategy launched in Australia is to increase the quality and quantity of the country's indigenous tourism product offering and the participation of indigenous Australians in the tourism industry through the provision of programmes and resources to aid indigenous tourism

development. In Brazil, using a competitive bidding process, the Ministry of Tourism supported 50 community tourism initiatives between 2008 and 2011, including 6 in indigenous communities. In Africa, the community-based tourism framework implemented in Kenya includes the participation and involvement of local and indigenous communities. Access to affordable credit is available through the Kenya Tourist Development Corporation. Among small island developing States and/or least developed countries in other regions, the Dominican Republic noted that it had launched initiatives to promote community participation in ecotourism projects and that, during the period 2004-2006, the National Congress had declared a number of regions as ecotourism provinces. Jamaica noted that the Forestry Department had promoted the formation of local forestry management committees through which local residents were able to participate in income-earning activities, including nature tourism. Samoa has implemented tourism awareness and education programmes for all stakeholders, in particular indigenous communities, and is working with tourism developers to better understand and resolve land issues, including by providing for community engagement and acceptance, community benefits and dispute resolution. Bhutan reported that all tourism stakeholders, including local communities, were consulted from the planning phase of tourism development to implementation. Planning was often decentralized at the local government level to encourage ownership of the initiatives and sustainability.

58. With regard to the empowerment of women, among African countries, including least developed countries and small island developing States, the Government of Kenya has established the Women Enterprise Fund and the Kenya Women Finance Trust to support small and medium-sized enterprises by women. The national tourism policy of the United Republic of Tanzania takes into account the importance of gender equality and women's empowerment. The Ministry of Natural Resources and Tourism, in collaboration with other development partners, has conducted special training programmes for women, focusing on cookery, housekeeping, customer care, tourist guiding, weaving, ceramics, bead making, tie-dye, apiculture, food processing and establishing village community banks. In the Gambia, women have been supported through training and information-sharing programmes. Among other countries, Australia has implemented a range of measures at the state/territory level, such as the Women in Micro Business Loan programme of the government of Tasmania, to encourage the involvement of women in business, including ecotourism. In Ethiopia, women and young people feature prominently in national policy and guideline documents covering all sectors.

E. Recommendations for national actions to increase the contribution of tourism to sustainable development

59. The following specific actions were overwhelmingly recommended in national responses as ways of increasing the contribution of tourism, including ecotourism, to reducing poverty, generating employment, empowering women, promoting development at the local and community levels, preserving natural and cultural heritage, including that of indigenous communities, and promoting sustainable development:

(a) Increasing cooperation with the private sector, especially small and medium-sized enterprises;

(b) Providing training for people working in the sector, such as language training and training in specific skills in tourism services;

(c) Strengthening legislative or policy frameworks and their implementation in the context of tourism for environmental protection, conservation of natural and cultural heritage, local and community development, support for small and medium-sized tourism enterprises and poverty reduction;

(d) Developing specific guidelines and awareness-raising materials;

(e) Building the capacity of Government staff and civil society;

(f) Providing incentives, such as subsidies or taxes.

60. Some respondents also drew attention to specific issues. Among African countries, the Comoros said that there was a need for training in the management of small projects and access to microcredit, the Niger called for training, monitoring and financial support for communities and Burundi stressed the importance of creating and supporting structures for the promotion of sustainable tourism. Cape Verde noted the importance of establishing inventories of natural and cultural resources for tourism, combined with a national plan for conservation and public use of protected areas. Burkina Faso suggested involving local communities, women and young people in the management of ecotourism projects. Among other countries, the United Arab Emirates said that it was important to establish a strong legal framework to safeguard valuable and vulnerable natural assets and that international conventions complemented national legislation by providing frameworks for the preservation of the environment, biodiversity and marine and coastal ecosystems. Colombia indicated that there was a need for stronger strategies for the dissemination, appropriation and application of the Global Code of Ethics for Tourism, suggesting that UNWTO, in coordination with its member States, could take the lead in that regard.

61. Many countries called for further training to increase the quality and availability of human resources in the tourism sector. Among least developed countries and small island developing States, the Gambia referred to supporting small businesses and community organizations to develop alternative means of generating income through tourism initiatives and developments. Trinidad and Tobago noted the importance of technical assistance, training and capacity-building for the implementation of health and safety and tourism-related standards. Yemen said that it needed significant support to build capacity and support the tourism sector as it currently had little or no tourism infrastructure. Among other countries, the Islamic Republic of Iran noted that training needed to include language and tourism-specific skills. Sri Lanka highlighted its development of homestays, handicraft villages and community tourism initiatives, while Slovenia noted the role that its national tourist association played in stimulating the involvement of local tourism associations in ecotourism development.

F. Suggested areas of assistance from the United Nations, specialized agencies and regional and international financial institutions

62. In their responses, countries also highlighted the following contributions of the United Nations, specialized agencies and regional and international financial

institutions that would be of greatest assistance in promoting sustainable tourism, including ecotourism:

(a) Assessment of greenhouse-gas emissions, water consumption and generation of solid wastes arising from the tourism sector and ways in which such impacts could be reduced, such as through environmental protection measures;

(b) Promotion and awareness-raising of good practices for sustainable tourism, in addition to the provision of technical assistance for their implementation;

(c) Provision of a platform for regional cooperation on sustainable tourism and assistance in linking existing sustainable tourism initiatives to comprehensive programmes for sustainable tourism;

(d) Support for capacity-building and financing for sustainable tourism;

(e) Support, including technical assistance, to market sustainable tourism.

63. Among African countries, including least developed countries and small island developing States, the Comoros highlighted the importance of regional cooperation between countries in the Indian Ocean on matters pertaining to tourism, the environment, agriculture and fisheries, in addition to the promotion and marketing of tourism. The Niger drew attention to the value that it gained, both generally and in relation to tourism, from its work at the international level with, among others, UNWTO, the Ramsar Convention, the International Monetary Fund, the World Bank and the International Union for Conservation of Nature. Mauritius similarly noted the value of the support and technical assistance that it received from United Nations agencies, UNDP and other international organizations in implementing poverty eradication programmes and protecting the environment. Ghana pointed out the role of partnerships with international aid agencies in developing and implementing ecotourism projects, while the Gambia highlighted the value of specialized technical assistance, including in relation to access to information and development of a tourism database, improved tourism data collection and capacity-building in research methodologies. Ethiopia noted that, while that support was important, it was also limited in extent and there was a need for greater coordination between the international agencies involved. Among small island developing States and/or least developed countries in other regions, Jamaica said that United Nations agencies and regional and international financial institutions could also play significant roles in raising awareness, building capacity, providing technical assistance and assisting in marketing. Bhutan and Haiti noted the importance of overseas development aid programmes in supporting initiatives to achieve the Millennium Development Goals, including in relation to the tourism sector. Bhutan also stressed that proper coordination among the stakeholders involved in tourism, including among Government agencies and with the private sector, was crucial. Trinidad and Tobago highlighted regional cooperation through the Organization of American States to establish a fund to facilitate capacity-building and training among member States in the area of tourism in an effort to alleviate poverty and through the Association of Caribbean States to promote initiatives for the sustainable development of the local tourism sector.

64. Among other countries, the United Arab Emirates noted the contribution that the United Nations, specialized agencies and regional and international financial institutions could make to the preservation of the environment and avoidance of

environmental hazards. Brazil, Colombia and Venezuela (Bolivarian Republic of) drew attention to the important role that the United Nations, specialized agencies and regional and international financial institutions played in the sharing and transfer of knowledge and best practice. The Islamic Republic of Iran suggested that those organizations should strengthen implementation of sustainable tourism by targeting the tourism industry and by undertaking appropriate educational projects. Brunei Darussalam suggested that those organizations could assist in the promotion of responsible behaviour by tourists and of standards or benchmarks for sustainable tourism practices globally. Slovenia noted the role of those organizations in delivering guidelines and tools, and of financial instruments aimed at stimulating green growth in the context of tourism. Romania called for better coordination and cooperation within the European Union, and also between Union strategies, policies and actions, on the one hand, and the programmes of other international structures and agencies, on the other, in order to have a more coherent approach to actions in the field of sustainable tourism. In 2011, international cooperation led Romania and Slovakia, along with five other States parties to the Framework Convention on the Protection and Sustainable Development of the Carpathians, to sign the Protocol on Sustainable Tourism. Under article 26 of the Protocol, with the objective to plan, develop and manage tourism activities in the Carpathians in an ecological, economic and socially sustainable manner, States parties are to promote the integration of the Guidelines on Biodiversity and Tourism Development in the development or review of their strategies and plans for tourism development in the Carpathians and other related sectoral strategies.

65. A number of developed countries highlighted their roles as donors and providers of bilateral support. Austria noted that, through the Austrian Development Cooperation, it supported countries in Africa, Asia, Central America and South-Eastern and Eastern Europe in their sustainable social, economic and democratic development. Monaco highlighted the technical assistance that it provided with regard to environmental protection and sustainable tourism, while Finland noted its support for and cooperation with many United Nations agencies, funds and programmes, in addition to international financial institutions, in poverty eradication and environmental protection. Australia drew attention to its engagement on sustainable tourism issues at the multilateral level through its membership of the Asia-Pacific Economic Cooperation Tourism Working Group, the Organization for Economic Cooperation and Development Tourism Committee and UNWTO, and on poverty reduction, environment protection and climate change adaptation through its international aid agency, AusAID.

VI. Conclusions and recommendations

66. National tourism plans, programmes and policies integrate ecotourism into the framework of sustainable tourism, which applies to all tourism subsectors.

67. The market for tourism is highly dynamic. Accordingly, it is important for national tourism plans and policies to take into account market trends in the types of tourism demanded by consumers and to focus on those subsectors of tourism in which they have a competitive advantage, in addition to ensuring that tourism activities and development are sustainable in the long term, including by ensuring environmental protection, respect for local and

indigenous communities and generation of benefits for local economic development.

68. **The effectiveness of tourism in contributing to poverty alleviation depends on obtaining an in-depth understanding of the specific social and livelihood context of the poor communities or groups that it is intended to help, and subsequently developing projects taking into account those factors, and on a realistic assessment of the market opportunities for tourism that can potentially be provided by these communities or groups, their existing capacity and assets, and the support and capacity-building that they will need to be effective in using such capacity and assets to provide commercially viable tourism products.**

69. **In the outcome document of the United Nations Conference on Sustainable Development, emphasis is laid on the importance of establishing, where necessary, appropriate guidelines and regulations in accordance with national priorities and legislation for promoting and supporting sustainable tourism. In that light, and to promote sustainable tourism, including ecotourism, as a tool to combat poverty and to encourage sustainable development and the attainment of the Millennium Development Goals, in addition to future sustainable development goals, the General Assembly may wish to consider:**

(a) **Inviting Governments, international agencies and other relevant organizations to carry out evaluations of the effectiveness of various types of tourism, including ecotourism, nature-based, rural and community-based tourism, and of various tourism business models in terms of alleviating poverty, protecting the environment and promoting sustainable development and the attainment of the Millennium Development Goals. Such work could be used to identify best practice and key success factors and to develop indicators to assess circumstances, including those of local and indigenous communities and environmental considerations, in which particular types of tourism and tourism business models may be most appropriate;**

(b) **Encouraging Governments, national and regional tourism agencies, tourism businesses and tourism business organizations to expand and strengthen the incorporation of materials to raise awareness of important natural and cultural features, in addition to ways in which tourists can help to protect such features and to support local communities and businesses, into all types of tourism;**

(c) **Inviting Governments, international agencies and other relevant organizations to highlight and support best practices in relation to the implementation of relevant guidelines in the tourism sector and to implement and disseminate more widely existing guidelines, including:**

(i) **Guidelines that specifically address the tourism sector, such as the Guidelines on Biodiversity and Tourism, the UNWTO mechanisms for poverty alleviation through tourism and the Global Code of Ethics for Tourism;**

(ii) **Other relevant guidelines and frameworks, including the Universal Declaration of Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples, the Global Compact and the UNWTO Tourism Partnerships for Development programme that supports the**

application of the Global Compact and the achievement of the Millennium Development Goals in the tourism sector, the Guiding Principles on Business and Human Rights, and the Akwé: Kon Voluntary Guidelines;

(d) Emphasizing that, where projects use tourism as a tool to support poverty alleviation, environmental protection and/or biodiversity conservation, the tourism components should have clear evidence of market demand and a sound economic base;

(e) Encouraging Governments, the tourism sector and relevant organizations to adopt and implement policies and practices to promote the full participation and involvement of local and indigenous communities, in addition to the full empowerment of women, in all tourism operations and development, including ecotourism activities, and to integrate poverty alleviation, environmental protection and biodiversity conservation considerations into national and local sustainable tourism plans and into planning and decisions on tourism development;

(f) Inviting Governments and the tourism sector to cooperate in supporting local and indigenous communities and peoples to participate in the tourism sector by obtaining employment and/or establishing tourism businesses, including through provision of training, support for market and product development, provision of grants or loans through mechanisms to which poor people can gain access and at rates that poor people can afford, allocation of secure property rights to poor people and communities, including indigenous peoples, and reform of national policies, as appropriate;

(g) Inviting relevant specialized agencies, United Nations bodies, other organizations and multilateral financial institutions to provide technical assistance to Governments to assist, as appropriate, in:

(i) Strengthening legislative or policy frameworks and their implementation in the context of tourism, including those for environmental protection, conservation of natural and cultural heritage, local and community development, support for small and medium-sized tourism enterprises and poverty reduction;

(ii) Building capacity to implement sustainable tourism policies;

(iii) Developing specific guidelines and awareness-raising materials;

(iv) Providing financing for sustainable tourism, including ecotourism;

(h) Inviting the United Nations, specialized agencies and other relevant organizations to further assess greenhouse-gas emissions, water consumption and generation of solid and liquid wastes arising from the tourism sector, in addition to ways in which those could be reduced, such as through regulation and other environmental protection measures.